

## Moving Beyond: Towards Transitional Justice in the Bangsamoro Peace Process



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# Moving Beyond: Towards Transitional Justice in the Bangsamoro Peace Process



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### CARDINAL QUEVEDO

This collection of articles is a valuable tool for understanding transitional justice and its possible contribution to a transformation of Central and South-Western Mindanao into a peaceful and progressive society after long intermittent periods of violent conflict.

The creation of a Bangsamoro with its own basic law fulfills three fundamental aspirations: the aspiration of the Moro people for self-determination, and the country's twin aspirations of preserving national sovereignty and national territorial integrity. The Comprehensive Agreement on the Bangsamoro is a concrete expression of these three fundamental aspirations, even if many sectors will certainly debate the multitude of details that were included in the Annexes.

From another optic the Comprehensive Agreement is likewise an expression of transitional justice. It hopes to transform Central and South-Western Mindanao from an arena of violent conflict to a society of peace and reconciliation. It hopes to reorganize Bangsamoro society and governance to be more democratic and more accountable. It hopes to effectively address the major concerns of Moros, Lumads, Christians, and peoples of other religious or philosophical traditions in Mindanao such as Hindus, Buddhists, or followers of Confucius.

Already in recent Philippine history in the aftermath of Martial Law years we have seen efforts of working on transitional justice, albeit with mixed results – restoration of democratic processes, judicial reforms, truth commissions, compensation for victims of human rights abuses, agrarian reform, among others.

The Annexes of the Comprehensive Agreement on the Bangsamoro spell out major elements of transitional justice, such as respect for fundamental human rights, establishment of new judicial processes, reform of political institutions and processes, reform of security forces, reintegration into ordinary life of former combatants. Educational and religious institutions will have to play their role for reconciliation as they contribute towards the substantial reduction of biases and prejudices among Mindanaons.

As a religious leader, my emphasis is not on the legal aspects of transitional justice, but on moral obligations and accountability. Justice is of course a moral virtue. Yet it is often understood simply in its legal sense. What is legal and what is moral is separated by a very fine thread, but the separation is nonetheless present. What is legal may not always be moral, granting the operations of different moral traditions in various religions in Mindanao.

Undoubtedly a close reading of the articles contained in this volume will help significantly in understanding the transition of Mindanao towards a future with hope.

**Orlando B. Cardinal Quevedo, O.M.I.**

Archbishop of Cotabato

## RAISSA JAJURIE

The long road to peace in Mindanao is an arduous journey. For the negotiators in the peace talks between the Government of the Philippines (GPH) and the Moro Islamic Liberation Front (MILF), it has meant 17 years of hard talk and painstaking bargaining on positions and issues, while steadfastly holding on to their respective principles. For the peace advocates, it entailed working hard through the different tracks of diplomacy, dealing with stakeholders of different persuasions, conflict-torn communities, and the antagonists in the negotiating table. For community members who find themselves at or near the battlefield in one of the longest running armed conflicts in Asia, it has meant displacement, massive violations of human rights, poverty, and insecurity.

Thus, when the GPH and the MILF signed the Framework Agreement on the Bangsamoro (FAB) in October 2012, there was renewed hope and expectation that peace may actually be possible. This hope continued as the negotiators from the two parties persisted on working on the annexes until the Comprehensive Agreement on the Bangsamoro was finally signed in March 2014.

Part of the hope and expectation that many hold on to is the notion that there will be a reckoning with past wrongs, even as we work for and forge into a brighter future. For those who feel they have been wronged, there is an expectation that there shall be a transitional justice mechanism that would “address the legitimate grievances of the Bangsamoro people, correct historical injustices, and address human rights violations,” as provided in the FAB (VIII.12) and in the Annex on Normalization (H.1, 2, 3). The “legitimate grievances” of the Bangsamoro people may include “unjust dispossession of their territorial and proprietary rights, customary land tenure or their marginalization,” which shall be acknowledged and restored. However, when restoration is no longer possible, the Central and the Bangsamoro Governments shall provide for measures for reparation that would be beneficial to the Bangsamoro people (FAB VI.2). With these provisions in the signed documents, people cannot help but anticipate the formulation and implementation of clear-cut program on transitional justice.

Surely, people in Mindanao are not just looking forward to peace, but also to justice. What meaning “justice” takes on in a post-peace agreement setting will still have to be threshed out. In fact, the Transitional Justice and Reconciliation Commission (TJRC), to be created under the mandate provided by the Annex on Normalization (H.1), is expected to “*undertake a study and recommend to the Panels the appropriate mechanisms for transitional justice and reconciliation [emphasis added].*”

It is in this context that this publication becomes valuable – by enriching the discourse in the Bangsamoro on transitional justice, towards designing and implementing a program that would propel the process for addressing justice issues, facilitate the healing process, and inspire genuine reconciliation. Only when we are able to deal with the past can we fully face the challenges of building a Bangsamoro that is just, harmonious, and progressive.

**Raissa H. Jajurie**

Member

Bangsamoro Transition Commission

### TIMUAY SANTOS UNSAD

For the Indigenous Peoples, peace is not just the absence of war, but most importantly is the security of their stomach, lives, properties, culture, system of self-governance, customary laws, ancestral domain, and identity. In a nutshell, freedom and justice.

The non-Moro Indigenous Peoples in the Bangsamoro, as they are known in the language of the FAB's Power Sharing Annex, have equally suffered injustices along with their Moro sisters and brothers in their respective ancestral domains and territories that their ancestors have established for future generations, be it historical and current. Historical, in the sense that when colonizers from Europe and the United States came, lands and culture of the indigenous inhabitants of Mindanao were taken forcibly without their consent. Now, vast tracts of indigenous lands are owned by non-indigenous religious institutions, companies, corporations, and wealthy individuals, including settlers or indigenous individuals in their capacity as traditional political leaders. Even their minds, their hearts, and way of life were colonized and corrupted.

Injustices continue until today against the Indigenous Peoples in the Bangsamoro. As a manifestation of current injustices committed against these peoples, their ancestral domains have not been recognized under the present Autonomous Region in Muslim Mindanao (ARMM), despite entrenchment of their rights in international declarations and national laws. For instance, the Indigenous Peoples Rights Act's legal instruments have not been implemented in the ARMM, and Indigenous Peoples continue to experience marginalization. Non-Moro Indigenous Peoples in this part of the nation have less in life, and have also less of the law.

Along with the lacking implementation of affirmative laws for the Indigenous Peoples in the Bangsamoro comes the absence of peace in their hearts and minds, because their ancestral domains became unwilling hosts of armed encounters between the Armed Forces of the Philippines and Moro rebels since 1970s until the middle of 2012. This caused massive permanent displacement of Indigenous Peoples from their ancestral domains, worst of which is the impending loss of connection with their territories.

Now that the new Bangsamoro Political Entity will be established in due time to replace the present ARMM, we view this as a golden opportunity of development and improved living conditions for us Indigenous Peoples, provided that our inherent and legislated rights will be entrenched in the Bangsamoro Basic Law (BBL).

It is in this context that a transitional justice program should give prime attention towards Indigenous Peoples' experiences of historical injustices, particularly regarding land tenure, to attain just peace and reconciliation in Central Mindanao, the future Bangsamoro Political Entity, and in Mindanao in general.

**Timuay Santos M. Unsad**

Deputy Supreme Tribal Chief

Timuay Justice and Governance

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“We asked how much truth or how much justice or reparation is possible?  
The other question is, how much can we handle?”

Participant at a roundtable on transitional justice, October 2013, Davao City

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Pursuing transitional justice faces a fundamental dilemma: while sensitive, contextual mechanisms can address historical injustice and pave the road to reconciliation, a process that is not adapted to local realities may instead deepen the wounds that it seeks to heal. Discovering this thin line along a “Philippine and Mindanaoan way” of transitional justice relies on a wider discourse on social visions of truth, justice, and reparation.

Such meaningful transitional justice should result from an inclusive process involving affected communities, conflict actors, and the wider post-conflict society. A first step is to take stock of previous experiences in dealing with the past, of lessons learned from other contexts, and of local needs and expectations. Only then can the emotional energies that are palpable on issues of justice and reconciliation be channelled into constructive engagements.

The current Bangsamoro peace process provides channels for such engagements by stipulating a transitional justice program “to address the legitimate grievances of the Bangsamoro people, correct historical injustices, and address human rights violations” in the Framework Agreement on the Bangsamoro (FAB, VIII.12). Moreover, the Annex on Normalization also provides for the creation of a Transitional Justice and Reconciliation Commission (TJRC) mandated to study and recommend appropriate mechanisms for transitional justice and reconciliation.

This offers opportunities for affected communities and concerned actors to advocate for transitional justice that moves beyond the vertical conflict lines between the Government of the Philippines and the Moro Islamic Liberation Front, towards mechanisms which also address the histories of violence and unravelling of social relations at the horizontal level of the conflict.

In this light, the present publication seeks to contribute to a broader public discourse on transitional justice in the context of the ongoing Bangsamoro peace process. It intends to familiarize readers with current debates in the field of transitional justice in general, as well as the particular opportunities, concerns, and entry points for doing transitional justice grounded in Mindanao's and the Philippines' realities.

The first part of the publication takes a close look at the concept of transitional justice itself – its potentials, but also limitations. While Hugo van der Merwe and Jasmina Brankovic present the evolution of transitional justice and elaborate the theoretical contestations within the concept, Rosario Figari Layús focuses more on practical challenges in the implementation of transitional justice. In examining lessons learned from Latin America, she points to challenges such as ensuring victims' participation, expectation management, and funding.

Moving from Latin American experiences to the South East Asian context in the second part of the publication, Galuh Wandita's field notes review the transitional justice efforts in Aceh, Indonesia from the perspective of a human rights activist. Based on her experiences, she identifies several lessons that are relevant for the design and implementation of transitional justice in the Bangsamoro context, which bears similarities to the post-conflict scenario in Aceh.

In his interview, Ruben Carranza examines how Philippine society has dealt with injustices and human rights violations in the past, and points to challenges and opportunities arising from this heritage for transitional justice in the Bangsamoro peace process. He argues that particularities of the Philippine political system and the specific context in Mindanao need to be considered for an effective approach to transitional justice.

The publication's third part leads the discussion into perspectives on transitional justice in Mindanao. Based on field research done in Central Mindanao, Rosa Cordillera Castillo studies the contextual nature of transitional justice from the perspective of local communities. In a context of mistrust and violence between different groups, multiple meanings of truth, justice, reparation, and reconciliation need to be taken into account in transitional justice mechanisms. Localizing transitional justice also implies affirming communities' distinct concepts of memory, trust, forgetting, and forgiving as important building blocks for a road to reconciliation in Mindanao.

The third part concludes with two essays pointing to the challenges for such wider reconciliation processes. Marian Pastor Roces takes a micro-macro perspective on transitional justice and explores how the politics of identity in Mindanao have largely developed outside the control of the communities it affected. She argues that, in the absence of a cosmopolitan framework for transitional justice in Mindanao, its advocates should embrace the complexity and diversity of identities that exist in the island.

Jurma Tikmasan enriches the picture by exploring the context of transitional justice in the island provinces of Western Mindanao from a gender perspective. Amidst sentiments of exclusion from the formal peace process, mechanisms based on the participation of women as well as Islamic values of justice and peace can contribute to reconciliation and heal wounds from traumatic events, such as the Jolo and Zamboanga sieges.

Based on a comprehensive review of the different arguments, the volume concludes with a discussion of possible ways towards meaningful and contextualized approaches for pursuing transitional justice in the Bangsamoro peace process.

Jasmina Brankovic and Hugo van der Merwe

## TRANSITIONAL JUSTICE IN POST-CONFLICT SOCIETIES: CONCEPTUAL FOUNDATIONS AND DEBATES

Over the past 25 years, transitional justice has emerged as an accepted approach to address legacies of past human rights violations worldwide. As noted by the United Nations, transitional justice comprises “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (2004: 8). The “large-scale” nature of the abuses transitional justice seeks to address, namely systematic and grave human rights violations, is what distinguishes the field from efforts to address other forms of violence. The process of dealing with these violations during a transition from authoritarianism to democracy or from war to peace presents particular challenges and opportunities in the pursuit of justice.

Several mechanisms, which usually have limited time frames and specific mandates, have come to dominate the field of transitional justice and contribute in different ways to promoting rights to justice, truth, and reparations:

- Prosecutions, launched through the permanent International Criminal Court, the ad hoc International Criminal Tribunals for Rwanda and the former Yugoslavia, hybrid international and domestic courts such as the Special Court for Sierra Leone, or national courts (some with special sections for international crimes);
- Truth commissions, which generally seek to generate an ‘authoritative record’ about past abuses and operate in a range of ways, including with public or closed hearings, general statements concerning responsibility or detailed lists of perpetrators’ names, and reliance on existing information or use of subpoenas, among others;
- Reparations for victims, which can be individual or collective and take the form of material reparations (cash payments, the building of a school or community center) or symbolic reparations (public apologies, memorials);
- Institutional reforms, aimed at democratizing and building public trust in state institutions;

- Community-based or ‘traditional’ justice mechanisms, where local conflict-resolution and healing practices are adapted to address grave violations;
- Vetting and lustration of public officials complicit in past abuses.

Although these are the most commonly used mechanisms of transitional justice, a range of other processes, from rewriting history textbooks to public storytelling, vigilante justice, and amnesty, can also be considered as broadly falling within the field’s ambit.

While transitional justice is an established field, it is also fairly new and still evolving. This has given rise to lively debates concerning its goals among practitioners and scholars in disciplines as diverse as law, psychology, sociology and forensic science, to name a few. Transitional justice actors also come from and work in diverse contexts in both the global South and North, which has prompted discussion regarding the appropriate meaning and goals of justice, the centrality of human rights or reconciliation, and whether the process should be based on ‘universalist’ or local values. There is an increasing consensus, however, that transitional justice processes must respond to the specific context of the country in transition, instead of relying on a ‘one size fits all’ model.

This chapter provides an overview of the conceptual evolution of transitional justice. It then discusses challenges likely to be met in post-conflict transitional settings – namely, multiple armed groups, legal pluralism, ethnic and religious tensions, socioeconomic marginalization, and gender inequality – along with some of the strategies used to address these challenges. While other countries’ experiences can offer some guidance regarding transitional processes, each new context in which transitional justice is attempted provides an opportunity to reshape the field in ways that respond to the needs and interests of the local population, as well as to garner new insights into how transitional justice can be conceptualized and put into practice.

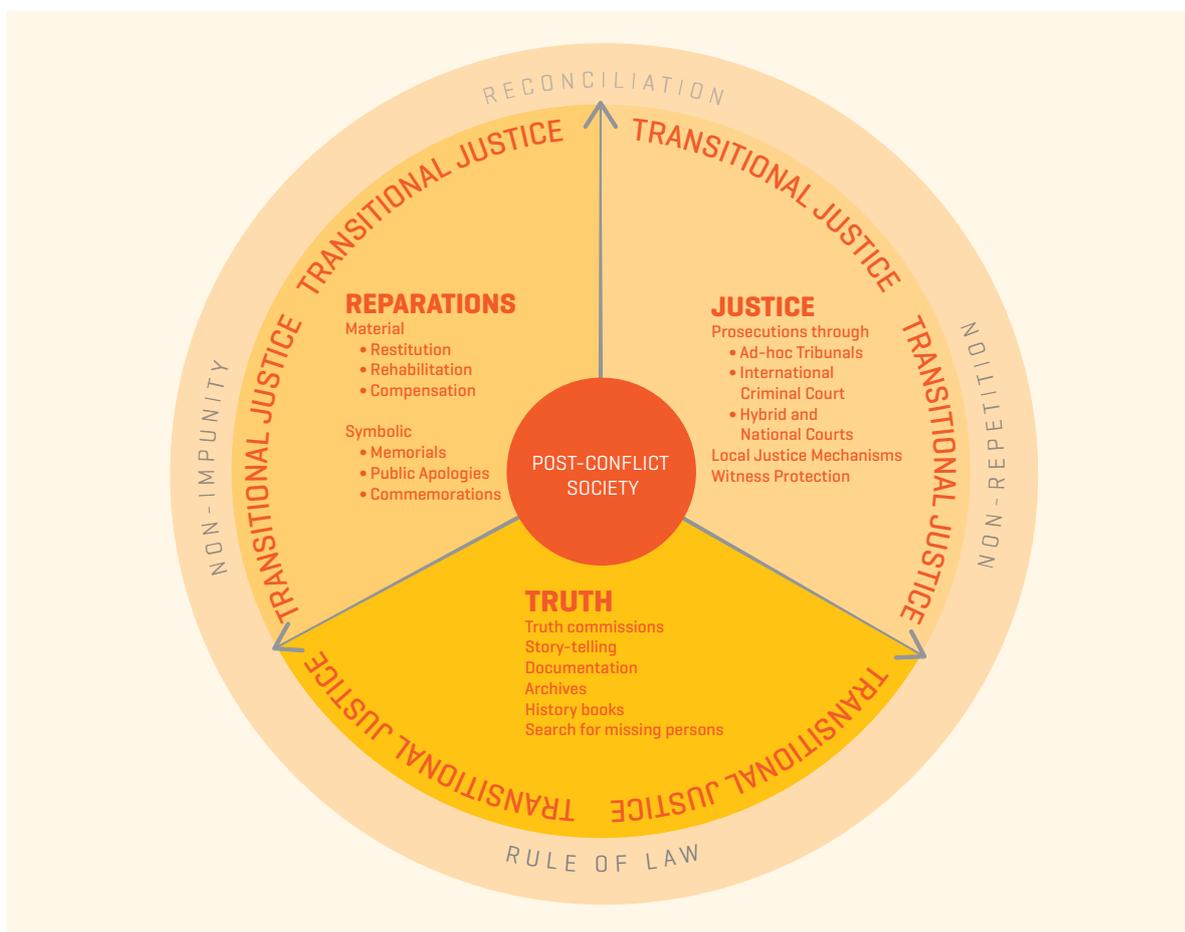
### Evolution of transitional justice

Transitional justice as a field of practice emerged in the late 1980s and early 1990s with efforts to facilitate the transitions from authoritarianism to democracy in Latin America and Eastern Europe and to address the violations committed by outgoing dictatorships. These efforts were driven by the human rights movement and were based on a commitment to build liberal democracies – two influences that continue to shape the field.

In addition to their role in framing post-dictatorship transitions, human rights serve as one of the conceptual foundations of transitional justice. The human rights movement has achieved global legitimacy since its emergence after World War II through the adoption of international treaties, the establishment of international human rights law (and its incorporation into domestic law by a rising number of countries), and the enforcement of human rights norms by international courts, culminating in the creation of the International Criminal Court in 2002. Drawing on and buoyed by the ascendancy of human rights discourse, transitional justice has focused on states' responsibility to ensure individual accountability for violations of international human rights standards.

While this human rights-based emphasis on individual accountability has helped to challenge impunity, it has also resulted in transitional justice being dominated by legal responses to past violations and a reliance on prosecutions (Teitel 2003). Combined with the human rights community's historical tendency to privilege civil and political rights violations over economic, social, and cultural rights violations, this has led to a greater focus on direct violations of bodily integrity, such as murder, torture, and unlawful detention, which some argue are more 'justiciable' (Arbour 2007), as opposed to, for example, structural harms such as socioeconomic exclusion. Thus, while human rights norms have bolstered transitional justice as it has developed into an accepted response to political transitions, they have also shaped it into a largely legalistic field with an often narrow accountability focus.

The other significant driver of transitional justice – its perceived utility in facilitating democratization – has highlighted states' responsibility to enforce human rights norms, but it has also demonstrated the political necessity of promoting alternative means of accountability. This has come in response to concerns that prosecutions alone could destabilize transitions in contexts where members



Inspired by Swiss Peace/FDFA

Three components of Transitional Justice

of the outgoing regime maintain political power. Thus, transitional justice actors have broadened their advocacy to include other mechanisms that have become central to the field, particularly truth commissions and reparations for victims.

While these quasi-judicial mechanisms pose a lesser 'threat' to perpetrators than trials, they still draw a 'bright line' between the outgoing regime and the new government's commitment to democratic governance and human rights, building its legitimacy in the eyes of the public (Daly 2008). Again, as these alternative mechanisms are framed in traditional human rights discourse, they focus more on civil and political rights violations and generally underplay the ways in which the structural harms of the past may be maintained in the new dispensation, which almost always embraces economic liberalization along with political liberalization.

The potential tension between the central aims of transitional justice – the legal ambition to ensure accountability and promote human rights standards through individual accountability for past international crimes, and the practical ambition to secure a successful transition to democracy – highlights some of the contestations intrinsic to the field (Bell 2009). This is reflected in the 'peace vs. justice' debate among transitional justice actors, which asks whether some degree of impunity must be accepted in order for opposing sides to reach a political settlement (Sriram and Pillay 2011). A less obvious, though perhaps more crucial contestation, lies in the question of whose interests are served by transitional justice: those of victims of grave violations, governmental elites working to establish their legitimacy, human rights entrepreneurs, experts with a stake in the international justice industry, or even those perpetrators who use transitional justice to focus international attention on the crimes of their opponents while deflecting it from their own (Kagoro 2012).

This question has become particularly salient since the increase in internal conflicts that characterizes the post-Cold War era and the attendant shift in transitional justice from addressing transitions from authoritarianism to democracy to addressing transitions from internal conflict to peace. The shift has increasingly involved applying transitional justice in contexts where a clear political transition has not occurred or where a conflict is still near the surface. In such contexts, the degree to which transitional justice can be manipulated to serve multiple and often conflicting interests is more evident, demanding attention from transitional justice actors.

A number of efforts have been made to take into account these conflicting interests, and two require mention. One is the use of local, community-based 'traditional' or 'indigenous' mechanisms, such as the Gacaca courts in

Rwanda or the Mato Oput conflict-resolution practices in Uganda. These mechanisms aim to be more relevant and accessible to local populations than 'western' processes such as prosecutions and truth commissions (Huyse and Salter 2008). The other is the use of local, civil society-driven transitional justice processes in addition to, or instead of, state-sponsored mechanisms. Similarly designed to be more locally relevant, these processes often focus on the needs of victims. This is in contrast to state-sponsored processes which often end up promoting the rights of perpetrators over those of victims, despite victim-centered rhetoric.

While many consider these country-specific and local-level approaches less rigorous than conventional, state-run mechanisms, they are a complement to narrow, legalistic transitional justice practice. They may serve to bring new voices into transitional justice debates, and represent an increasing desire within the field to be more context-responsive instead of relying on 'one size fits all' processes (McEvoy and McGregor 2008).

### Key transitional justice challenges in post-conflict contexts

Transitional justice is an evolving field and a contested terrain. Its shifts and tensions are a response not just to a changing global context but also to the way that each society adapts transitional justice to address local needs. A context-based transitional justice approach is however not simply a process of synchronizing a global model to fit local particularities. It requires creativity to generate new solutions, and it requires problem-solving processes and serious negotiations to address competing claims and agendas.

#### *Multiple armed groups*

The involvement of multiple armed groups in a conflict is a frequent reality that provides both a challenge and an opportunity for transitional justice interventions. In countries where the state was responsible for almost all the violence, and the opposition did not adopt armed resistance, the morality of state violence is easily addressed through a human rights framework. State abuses are uniformly condemned by both society and the new post-conflict state, particularly where the Cold War provided justification for ideological repression that no longer seems relevant. Where violence was perpetrated by multiple sides of a conflict, the battle over the legitimacy of different forms of violence continues well beyond the end of the conflict. It is then much more difficult to establish a common value frame for judging the violence used by different actors when state repression and terrorist or guerrilla warfare are used by both sides as justification for their response.

More legalistic transitional justice processes approach this tension by seeking a common (or generally international) legal definition of abuses that can facilitate an even-handed approach to treating victims and perpetrators in a consistent manner. At a deeper level, more process-oriented and participative transitional justice endeavors (such as many traditional or community-based mechanisms) have also sought to move beyond seeking 'fairness' at a formal level. Through the use of public dialogue, these processes aim to facilitate mutual understanding of the motivations and roots of conflict. While clarifying who committed more abuses or who killed more civilians can be very important, understanding the historical dynamics that gave rise to armed rebellion or the establishment of militias may be just as critical in facilitating a process of reconciliation.

#### *Legal pluralism and competing conceptions of justice*

Despite the dominance of formal legal systems at the international and national level, the role of such systems in managing conflict within local communities is debatable. Even in western societies, critics question the ability of courts to provide adequate redress for victims, resolve conflicts, or prevent future violations. In societies with functioning alternative legal traditions (Islamic, local cultural practices, etc.), questions about the legitimacy of formal, law-based approaches to social order reach even deeper.

Transitional justice interventions have been associated with a strong 'rule of law' agenda. While this is generally a welcome alternative to the rule of force or the unfettered authority of the state that characterizes many post-conflict contexts, it often presents a threat to existing state or community-based systems of knowledge and conceptions of justice. While not dismissing the need for a fair system that is uniformly applied, transitional justice approaches have been cautioned to not ride roughshod over local forms of justice that serve as a resource for managing conflicts within a community (Huysse and Salter 2008).

Transitional justice processes have learned to draw on these local justice mechanisms to complement formal accountability and truth-seeking mechanisms, as in Rwanda, or their values and approaches have been incorporated into the more traditional institutions, as in Uganda or Timor Leste. Tensions between these approaches are likely to emerge as they often comprise alternative sources of authority with different understandings of the values that should guide a new society (Iliff 2012).

One of the common legacies of intense, long-term internal conflicts is that mechanisms for resolving conflict become compromised and delegitimized. This



Photo: Elise Finocchiaro

Gacaca courts established in 2001 in Rwanda after the genocide of 1994

legacy may affect both state institutions and alternative local justice processes when they become harnessed for political purposes by either side in the conflict. The need to address this legacy through reform of such systems is often suggested as the first step in them becoming appropriate tools for resolving human rights abuses.

Innovation in reforming or adapting traditional justice processes is also required in order to make them suitable for dealing with disputes that go beyond the bounds initially anticipated for these systems. Conceiving of appropriate punishment or compensation for systematic torture or terror attacks is generally seen as overextending their mandate. They are also stretched in their attempts to deal with conflict between individuals or groups who come from communities with competing legal traditions.

A key concern that has been raised in various post-conflict contexts is that transitional justice approaches should not be one-off interventions that deal simply with past abuses. The fragile nature of these societies and the high potential of future violence indicate the need to build local capacity within communities and the state to deal with such tensions on a sustainable basis. Thus, transitional justice interventions should contribute to rebuilding foundations for local institutional and cultural capacity to deal with conflict when it emerges again.

#### *Ethnic and religious tensions*

In addition to having competing perspectives on how conflict should be resolved, cultural, ethnic, and religious groups may embrace fundamentally different histories of the conflict. Transitional justice processes are often

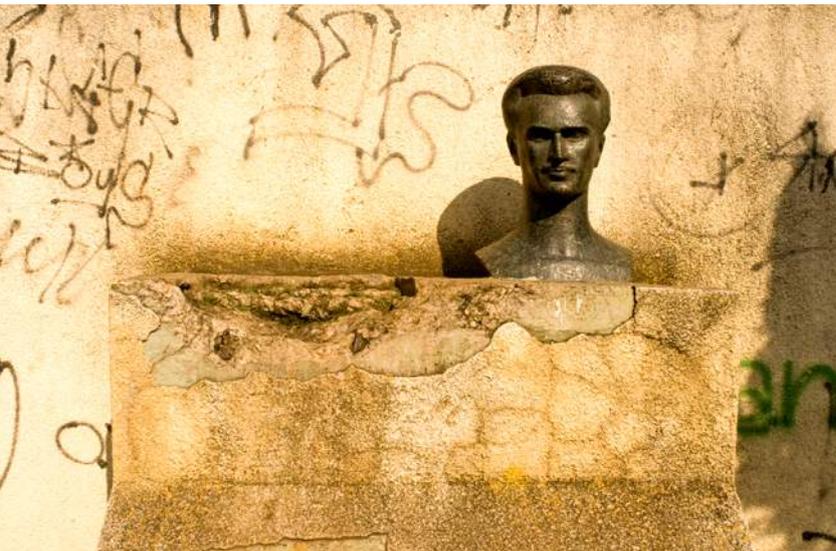


Photo: Marko Kojic

Monument to Boro Vukmirović and Ramiz Sadiku in Pristina, Kosovo.

thought to facilitate better dialogue (and even a shared identity) across these social divisions. Severe conflict and mass trauma in particular often cement competing memories and interpretations of past events. Rather than simply addressing individual experiences of victimization and personal accountability, transitional justice seeks to speak to communal audiences. Both formal legal processes and truth commissions portray themselves as avenues to present a common narrative or at least a common set of objective facts that can form the basis for an 'authoritative record' of the past. Some transitional justice processes, however, emphasize the importance of the dialogue process they facilitate between groups, rather than the outcome, as the key element in rebuilding such relations.

The psycho-social dynamics of collective trauma are still not fully understood by the transitional justice field. In particular, the impact of processes such as public storytelling, apologies by political leaders, joint healing ceremonies, and other symbolic processes of dialogue and exchange are unclear. Within deeply divided societies, positive outcomes may be highly dependent on the ability of these societies to create meaningful forms of cross-cultural communication. In addition, symbolic public processes that address deeply traumatic events are often seen as empty symbolism or mere ritual (Celermajer 2013). They need to be linked to tangible shifts in behavior and concrete measures addressing victims' concerns if they are to serve as a meaningful indicator of a change.

Where divisions between groups are embedded in deeper socioeconomic inequalities and legacies of exploitation, processes of dialogue and sociopolitical reform are likely to have limited impact if not linked to broader economic and social transformation.

### *Socioeconomic marginalization*

In the past decade, transitional justice actors have increasingly called for the expansion of the field's narrow focus in order to address (more sustainably) the roots of conflict and grave violations. The target for such calls has largely been socioeconomic inequality and systematic marginalization. These are often sidelined in transitional justice practice because of the field's characteristic concentration on violations of political and civil rights violations over economic, social, and cultural rights. This is reinforced by a hesitation to upset the political balance by threatening elites' economic interests. A debate has emerged between those who understand transitional justice as a long-term program for social change that only begins with the 'transition moment', and those who understand it as a necessarily short-term project with 'realistic' goals that can be achieved within the limited remit of dedicated state-sponsored mechanisms.

The main approach to incorporating socioeconomic issues into transitional justice has been through the promotion and enforcement of economic, social, and cultural rights. Some transitional justice actors have argued for going beyond the human rights discourse toward a more 'transformative' justice discourse, questioning the liberal political and economic agendas that underpin the field. They point out the power of transitional justice processes to reveal the continuities between past and present socioeconomic exclusion and structural harms (Gready 2011).

The field's engagement with this topic has been largely theoretical to date. Only a handful of truth commissions – such as those in Peru, Guatemala, and particularly Kenya, which included a chapter on land misallocation and misuse by political elites in its final report – have discussed histories and ongoing practices of socioeconomic marginalization of specific identity groups. Some reparation programs, like in Peru and Uganda, have framed development projects as collective reparations for past systematic exclusion of specific communities, although this can be problematic in equating a state's developmental obligations with its duty to redress victims. Attempts to address socioeconomic marginalization through transitional justice are an area of growing interest and evolving practice for both state-sponsored and civil society-driven processes.

### *Gender inequality*

While transitional justice has attempted to address gender issues since its beginning, the past decade has seen the focus broaden from efforts to ensure accountability for systematic sexual and gender-based violence against women to programs aimed at increasing gender equality during and after transition. A more 'transformative' agenda identifying the continuities between past and

present exclusion based on gender is often linked to the similar discourse concerning socioeconomic exclusion (Ní Aoláin 2012).

In the mid-1990s, the International Criminal Tribunals for Rwanda and the former Yugoslavia broke new ground, prosecuting systematic sexual violence against women as a crime against humanity. In addition, efforts were made to ensure the representation of women not only in transitional justice processes but also at the negotiating table beforehand. It has been noted, however, that a greater number of women in such institutions does not necessarily translate into gender equality on the ground.

Discussions on reparations have engaged with this issue as well, as it has been recognized that the principle of restitution to the pre-conflict situation might not always make sense. This is particularly the case in contexts where women have obtained an unprecedented degree of socioeconomic and political independence in the course of the conflict (Valji 2009).

Increasing nuance in gender analyses has also led to awareness of the need to deal with gender-based violence against men and boys, as well as violence based on sexual orientation or gender identity. In sum, recent approaches addressing systematic gender-based violence broadly defined and gender inequality as a structural harm have reinforced the understanding that gender cannot be a separate component of transitional justice mechanisms but rather must be integrated into all aspects of the transition process.

## Conclusion

Transitional justice is still an emerging and contested field. International bodies and policy makers in all parts of the world have embraced it with enthusiasm and loaded its processes with ambitious mandates. Yet in many countries the failure to deliver quick-fix solutions has resulted in skepticism about whose goals transitional justice processes serve. The huge challenges presented by transitioning countries with devastating legacies of conflict clearly require more long-term and contextually informed interventions.

Transitional justice processes have not been sufficiently evaluated to present clear answers to the myriad of problems faced by countries emerging from long conflicts. While international experts have contributed by documenting experiences from many countries facing similar challenges of how to deal with the past, the relevance of those lessons can only be judged by those who understand local challenges and local resources and who own the agenda for (re)building a new society.

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Rosario Figari Layús

## IMPLEMENTING TRANSITIONAL JUSTICE: INSIGHTS FROM LATIN AMERICA

This article aims to analyze the challenges and difficulties involved in the formulation and implementation of transitional justice policies in post-conflict societies. In doing so, the article will explore some experiences from Latin American countries which applied transitional justice mechanisms. It provides examples of positive policies, but also points to risks and challenges that accompany transitional justice efforts.

### Transitional justice policies in post-conflict societies: challenges and potential difficulties

#### *Dealing with standardized concepts*

The formulation and implementation of transitional justice measures in post-conflict societies are two fundamental phases of a peace process which involve different challenges and risks. One such challenge is the complex process of incorporating and enforcing the international paradigm and norms of human rights at the national level, while at the same time respecting local realities, needs, and interests. For that reason, it is essential to make an initial diagnosis of the local, post-conflict scenario in the planning phase of transitional justice efforts. This analysis should include the common, and often contradictory, interests of local stakeholders such as victims, minorities, non-governmental organizations (NGO), and civil society regarding truth, justice, and reparations. The consideration of local interests is fundamental to the legitimacy, effectiveness and long-term sustainability of any transitional justice policy. Thus, the implementation of standardized transitional justice models, even with good intentions, often does not address the specific needs of a post-conflict society, as illustrated by the case of El Salvador.

The internal armed conflict in El Salvador between U.S.-backed state forces and the left-wing armed guerrilla Frente Farabundo Martí para la Liberación Nacional (Farabundo Martí Front for National Liberation) was widespread and indiscriminate, with massacres, extrajudicial executions, forced displacements and enforced disappearances taking place. Over 5,500 people, including hundreds of children were forcibly disappeared (OHCHR 2007: 2). Peace negotiations began in 1990, and on January 16, 1992, the Chapultepec Peace Agreement, was signed by the two parties, formally ending the conflict. The signing of the peace agreement envisaged some transitional

justice measures such as the reintegration of demobilized combatants and the establishment of a truth commission (Oetler 2004). Funded by the UN and composed of foreign members, the truth commission ended its activity in March 1993 with the presentation of its final report which concluded that more than 70,000 people were killed.

However, despite the UN-sponsored peace accords in 1992 and the establishment of a truth commission, there has been virtually no discernible accountability movement (Oetler 2004, Collins 2008). The apparent lack of interest in accountability in El Salvador, not just in the general public, but even among relatives and survivors, can be related to a range of factors, including the victims' realities and the consequences of the crimes committed.

The majority of victims belonged to remote rural communities and the killings and enforced disappearances caused not only mental and psychological damage to their relatives, but material consequences as well. In many cases the killed or disappeared person was the family's main breadwinner and he or she was the only member of the family able to cultivate the crops or run the family business. The emotional upheaval of the loss of the person was exacerbated by material deprivation and would be made more acute by the costs incurred should they decide to undertake a search for the disappeared or initiate judicial action.

Economic and social marginalization in post-conflict societies reduced the possibility of social mobilization of victims and their families to demand for their rights since many had to prioritize earning incomes for their families (OHCHR 2009: 4). These factors contributed to the lack of accountability in El Salvador as people pursued economic needs and livelihood concerns in the post-conflict setting. The implementation of reparation programs could have been a more effective transitional justice measure to take in El Salvador and shows the importance of prioritizing local interest and needs before applying a handbook policy.

#### *Engaging victims*

Transitional justice mechanisms should include means of recognition and protection of victims' rights in their particular context. In order to do this, it is fundamentally

necessary to guarantee the participation of victims in the transitional justice process. The empowerment of these actors is an important factor in providing legitimacy to the peace process as well as changing the asymmetrical relations between victims and perpetrators. The participation of victims in transitional justice processes implies, among others, facilitating access to information, resources, hearings, peace negotiation meetings and legal advice. In many Latin American countries the exclusion of victims of transitional processes or peace negotiations has been a serious problem.

For instance, the Colombian demobilization process of right wing-paramilitary groups (2003-2006), known as “the Justice and Peace Process”, included the reduction of sentences against demobilized paramilitaries accused of crimes against humanity in exchange for full confessions. Yet victims complained that they were not able to participate in the formulation and implementation of the justice and reparation program. They were hindered by several facts, such as rarely receiving notifications in time to take part in judicial proceedings, which were held in only a few locations of the country (International Crisis Group 2008). When they were notified in proper time, many did not have sufficient economic resources to travel to the hearings as the government did not provide financial support for them to do so (Figari Layús 2010).

Intimidations, threats, and even killings are frequent problems affecting many victims who actively participate and testify in transitional justice initiatives. In post-conflict societies, victims are often under threat, especially when former perpetrators are still at large. In Argentina, those testifying in the current human rights trials against former military personnel accused of human rights violations during the last dictatorship (1976-1983) often experience intimidation through arson and kidnapping (Figari Layús 2014). An emblematic case was the disappearance of Jorge Julio Lopez in 2006, a primary witnesses and plaintiff in the trial against a former police commander in the province of Buenos Aires. Jorge Julio Lopez identified the defendant as one of the men who tortured him in 1976, and he disappeared the day the judgment was announced.

The implementation of programs for the protection of witnesses and victims at national and local level plays a fundamental role to address these kinds of dangers for victims. The governments of both former president Nester Kirchner (2003-2007) and current president Cristina Fernandez de Kirchner (2007-present) deployed a national witness protection program with serious deficiencies. These included lack of budget, poorly trained security personnel, and lack of coordination between national and local agencies to provide protection to witnesses (Borello 2010).

Factors such as the precarious security of victims, a lack of available information and resources, restricted participation mechanisms and overburdened institutional capacities need to be addressed by policy makers to guarantee victims’ inclusion in transitional justice processes. In fact, the inclusion of victims is not easy as there is a diversity of perspectives among victims in post-conflict societies and the category of “victims” does not refer to a homogeneous group. It encompasses different types of people with different experiences and realities during and after the conflict. Considering this, flexibility in formulating transitional justice policies can contribute to specific redress for different needs and demands. For instance, the socio-economic status of victims is an important factor in determining the nature of the reparations to be provided, particularly for reparations having a transformative potential rather than a mere restitutive effect (Uprimny and Saffon 2007). In societies with high levels of inequality like Colombia and Guatemala, where social exclusion and poverty were root causes of the conflicts, victims of human rights violations usually belonged to the poorest and most marginalized sectors of society. In such cases, reparation should not just return them to their situation before they were victimized, but should also provide an opportunity to improve their respective situations.

#### *Dealing with perpetrators*

Another key element to be addressed when formulating transitional justice policies is the role and power of ex-combatants and perpetrators of human rights violations in the transition to peace and the justice measures to be implemented. Securing a stable peace and providing an adequate response to the human rights violations perpetrated during the course of an internal conflict is one of the main challenges of transitional justice processes in post-conflict scenarios.

International law provides a legal framework defining the rights to justice, truth and reparations for victims and the corresponding obligations of the state, but peace negotiations and contested political structures do not always easily allow for the fulfillment of those rights. The right to justice, present in many international legal documents<sup>1</sup>, appeals to the states to investigate, prosecute, and sanction perpetrators of crimes against humanity. Criminal accountability, as an important response to mass violence, is reflected in international legal tools such as the international legal doctrine of universal jurisdiction and the Rome Statute of the International Criminal Court. However, pressing criminal charges against those who perpetrated atrocious crimes represents a difficult dilemma in a transitional justice

<sup>1</sup> See for instance the report of Diane Orentlicher (2005), Independent Expert to Update the Set of Principles to Combat Impunity E/CN.4/2005/102/Add. Principle 1 affirms the general obligations of states regarding taking effective action to combat impunity.

process. There is tension between the demands for justice from the side of society and victims on the one hand, and the interests of both state and non-state armed groups, still wielding the power to negotiate, on the other. In these cases, amnesty laws are frequent, but controversial, instruments of transitional justice.

Although negotiated impunity may be considered the only way to arrive at a peace agreement in some conflict settings, it is important to draw attention to the risks of widespread impunity for society, as well as for the future political and legal system. The dismissal of prosecutions and the granting of amnesty can produce negative effects by portraying the state or armed actors as privileged or above the law while showing disdain and contempt towards their victims (Stanley 2008). In transitional scenarios, trials can be effective tools to demonstrate a break with the former order and the prosecution of former perpetrators can be an effective resource to prevent future abuses and strengthen the rule of law. The non-discriminatory character of penal justice shows that, in comparison to the previous order, no perpetrator enjoys privileges when violating human rights. National and international trials seem to represent a normative consensus against blanket amnesty and toward the inclusion of some judicialization in transitional settlements. In this regard some recent studies on the effects of trials, especially in Latin America, have shown that the growing frequency of domestic trials has a positive impact on democracy and human rights indicators, such as a reduction of torture, extrajudicial killings and other crimes (Sikkink 2011).

### *Resourcing transitional justice*

Transitional justice policies cannot succeed without sufficient funding to develop the above-mentioned justice, reparation and truth-seeking initiatives and to provide for contingencies that occur along the way. Trials, truth and inquiry commissions, and reparation programs for victims usually require the creation of new and/or ad-hoc institutions and programs. The risk of embarking on the journey of transitional justice without the necessary resources can have serious consequences for their legitimacy and effectiveness in the long term, as seen in both Argentina and Peru.

In Argentina, the extent of crimes committed during the dictatorship was such that human and material resources were insufficient when trials against former members of the militaries took place since 2006. This led to a small number of available personnel, judges and lawyers, as well as a lack of space in the federal courts in which trial proceedings were conducted (Figari Layús 2014). Even though a few creative attempts were made to rectify this situation – for instance, one criminal trial was conducted in a soccer stadium and one in a theatre due to lack of courtrooms – there seemed to be insufficient political and juridical will to find a solution to the problem. These deficiencies were also found in other programs and institutions created to support these trials such as the Prosecution Coordination Unit, which prosecutes cases of human rights violations committed during the period of state terrorism. Many NGOs were critical because the unit lacked sufficient personnel, forcing state prosecutors to work on human rights trials in addition to their normal case load. Thus, many cases were denied a court proceeding and perpetrators were neither identified nor did they stand trial (International Federation For Human Rights 2009). Particularly troubling, given that a primary aim of transitional justice is to reveal the truth about the past, is that much information about the whereabouts of victims forcibly disappeared remains unknown.

Embarking on transitional justice without sufficient resources and political will runs the risk of causing more broken promises for victims. This is often found in the implementation of reparation programs. In Peru, different governments have taken significant steps since 2003 to address the severe and massive human rights violations committed during the country's internal armed conflict (1980-2000). However, efforts to provide victims reparations had less progress (Correa 2013). In 2003, the Truth and Reconciliation Commission (Comisión de la Verdad y Reconciliación) not only delivered a compelling report of the violence and its causes but also provided recommendations for victims' reparations including multiple programs that were aimed at addressing deep socio-economic disparities. As such, reparations focused not only on redressing crimes suffered individually (for example violations of civil rights) but also on equalizing



Photo: Alejandra Carreras

Argentinian men after hearing the sentence against former members of police and military for crimes against humanity committed during the military dictatorship (1976-1983) in Argentina

disparities in economic, social and cultural rights for the inhabitants of historically marginalized communities. Although initial steps were taken to implement the recommendations, not many were accomplished, and victims continue to wait (Correa 2013).

### Pitfalls and recommendations

Transitional justice initiatives, when applied properly, can work as important means to achieve social and personal repair of victims of human rights violations. However, inappropriate implementation of such policies can be more harmful than beneficial. Transitional justice laws and reparation programs entail governmental commitments which create expectation in the society, especially among victims. If these expectations are frustrated, the legitimacy of the government and of the transitional justice process is threatened. This may also limit incentives for other governments to use them again in the future.

Therefore, while successful implementation of transitional justice policies can increase the trust in the state and reinforce the rule of law, implementation failures, in contrast, may reduce the government's legitimacy, prevent it from stabilizing the country's situation and re-victimize those most affected by the conflict. It is important for governments embarking on a transitional justice process to be aware that the effective implementation of transitional justice will include high costs for funding of new institutions and programs, adoption of new laws and employment and training of qualified personnel, among others. Otherwise, the state risks undermining itself when instituting a justice policy that does not provide the necessary infrastructure to properly carry out initiatives that were promised.

Furthermore, it is crucial to prioritize local interests and needs when formulating transitional justice programs and policies. The implementation of generic transitional justice models, while it may have good intentions, runs the risk of failing to address the specific needs of local communities and victims. Justice policies and programs that successfully worked in a certain post-conflict contexts may not be the appropriate in others. There is no 'one size fits all' approach. In other words, the development of transitional justice policies implies a learning process that requires a number of changes, errors, adjustments, and innovation strategies not only by the government but also by civil society, in order to be able to provide an adequate political, legal, and economical response to victims who suffered serious social, physical, psychological, and material damage.

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Galuh Wandita

## LESSONS FROM ACEH FOR MINDANAO: NOTES FROM THE FIELD



*First, I ask forgiveness if this letter from me may disturb your peace of mind in government... My name is Halimah... At the time (in 1999), I was a junior high school student, in my third year, just finished with our national exams that took place that Monday. I came home from school, still wearing my school uniform when I was caught at the KKA junction. No vehicles could pass because of the traffic jam, the street was filled with people. Exactly noon that historical incident took place where armed soldiers fought against people who had no guns. I fainted because a bullet hit me in the head. Since this happened until now I still suffer and probably until the day I die, because a shrapnel is still lodged under the skin in my head."*

*Through this letter, we victims, especially me personally, hope that (President) SBY whom I respect would open your heart and take action that is decisive and just to deal with this case... We victims really hope that a human rights court and a truth commission can be established in Aceh. We victims may forgive but this does not mean we can ever forget."*

Letter from a woman survivor of a massacre in 1999, addressed to President Susilo Bambang Yudhoyono in 2012<sup>1</sup>

### Transitional justice and the peace agreement in Aceh

Nine years since the signing of the peace agreement between the separatist movement *Gerakan Aceh Merdeka* (GAM, Free Aceh Movement) and the government of Indonesia, there is little progress on the promise for truth and justice. This has led to growing frustrations, especially among victims of human rights violations, and human rights advocates.

In late 2004, Aceh was devastated by a Tsunami which killed more than 200,000 people within a few minutes. A year later, shocked by the loss caused by this natural disaster and cajoled by international good will for humanitarian assistance, the warring parties signed a peace agreement, known as the Helsinki Memorandum of Understanding (MoU), which, among others, provided Aceh with autonomous powers for governance.<sup>2</sup> Some provisions in the peace agreement also sought to address historical injustices and human rights violations, including:

- The establishment of a Truth and Reconciliation Commission for Aceh and a court with jurisdiction over crimes against humanity and genocide (2.3);
- Amnesty for individuals detained/imprisoned for being members of the GAM (3.1.1);
- Demobilization, disarmament and decommissioning of GAM combatants and relocation of Indonesian security forces (4.2-4.6);
- Instead of a reparation program, a reintegration program proposed economic support for former combatants, political prisoners and "civilians who suffered a demonstrable loss." However, there was no specific mention of victims, vulnerable groups or women (3.2);
- Establishment and reform of legal institutions in Aceh in order to strengthen accountability and rule of law (1.4).

The Helsinki MoU also created an independent monitoring group – the Aceh Monitoring Mission – led by the European Union in cooperation with representatives from neighboring ASEAN countries. A major focus was monitoring the disarming and destruction of weapons handed over by the GAM, and in parallel, the relocation of some 25,000 Indonesian army and police from Aceh. The GAM was officially disbanded at end of 2005 and was transformed into a political organization called the

<sup>1</sup> This letter was sent to President Susilo Bambang Yudhoyono in a packet of 1000 letters from victims in July 2012. Asia Justice and Rights (AJAR), a non-profit organization based in Jakarta, Indonesia working to strengthen accountability and respect for human rights in the Asia Pacific region, published the collection of victims' stories in the report "Remembering My Beloved, Remembering My Pain: How a group of victims from Timor-Leste and Aceh collected their own stories to push for change" in 2012, which is available at <http://asia-ajar.org/publications/Remembering%20My%20Beloved.pdf>.

<sup>2</sup> For more information on the conflict history and the peace process in Aceh, see Edward Aspinall's account "Islam and Nation: Separatist Rebellion in Aceh, Indonesia" (2009) and the International Crisis Group Asia Reports on Aceh (2001, 2003, 2007).

*Komite Peralihan Aceh* (Committee for Aceh's Transition). Eventually, GAM members formed local political parties that competed in the elections of 2009 and 2014.

### A shrinking commitment to accountability in Jakarta

Early on in the peace process, the Indonesian national parliament showed its reluctance to implement provisions for accountability already agreed in the Helsinki MoU. This reluctance was consistent with a systematic lack of political will to implement justice measures at a national level (ICTJ and KontraS 2011). In particular, two key provisions of the Helsinki MoU were altered in the national law on the implementation of regional governance in Aceh (Law on the Governing of Aceh) passed by the parliament in Jakarta in 2006:

- The human rights court (which under existing Indonesian law has jurisdiction over crimes against humanity and genocide, and has powers to be retroactive with parliament discretion) was limited to future violations. This reflected the lack of political will to investigate crimes that were committed during the conflict.
- The truth commission was inseparably linked to a national truth commission. Thus, when the Constitutional Court annulled the 2004 law establishing this national truth commission, central government officials claimed that a truth commission for Aceh could not be established (Clarke, Wandita and Samsidar 2008).

### Victims demanding justice in Aceh

In its early years, the peace process in Aceh focused mainly on security sector reform and political reform. The Aceh Monitoring Mission, the Indonesian government and GAM first completed the task of disarming and decommissioning both sides and establishing local political parties. Consequently, the relatively peaceful election of 2009 was considered an indicator of success.

However, the provisions on justice and accountability fell off the agenda. Some observers believe that both sides did not want to address justice issues as each of them may have committed war crimes. Human rights advocates demanding investigations were seen as “spoilers” of peace. Many international organizations, including UN agencies, sidestepped justice issues for fear of upsetting both sides.

Since 2006, victims groups started to actively speak about their demands for justice and truth. In July 2007, Acehese human rights NGOs for instance facilitated a victims' congress to strengthen the victims' role in the peace process (Clarke, Wandita and Samsidar 2008:17).

However, because much of the international and national attention focused on reintegration processes involving former combatants, their voices were hardly heard. Despite the existence of a reintegration program supposed to provide economic support not only to former combatants and political prisoners, but also to “conflict-affected” civilians, victims were mostly invisible to government officials.

One exception was the provision of *diyat*, an Islamic form of compensation to some 20,000 widows. This program commenced before the peace process and was continued and adopted by *Badan Reintegrasi Aceh* (BRA), Aceh's reintegration body. However, by each widow receiving a one-time payment of around 200-300 USD, the amount granted was relatively small. In addition, the payment was not accompanied by any kind of acknowledgement or apology for her husband's killing or disappearance. Another major concern was that victims of sexual violence were not included in any of these schemes because BRA officials believed it was too difficult for victims to provide evidence that a sexual assault took place. Instead of addressing this challenge, they chose to exclude victims of sexual violence, a move consistent with the fact that the Helsinki MoU did not include specific provisions for women's issues and concerns.

Nevertheless, in the decade since the signing of the Helsinki MoU, victims, survivors, and civil society have not remained passive. Many groups have consistently commemorated events of mass killings, demanding accountability, believing that an official recognition of what took place is a necessary foundation for lasting peace.<sup>3</sup>

### A truth commission established by local legislation

Faced with the broken promise to establish a truth commission, victims groups and civil society in Aceh have campaigned for the establishment of a truth commission by local legislation. They argue that the provision in the Law on Governing of Aceh, which inseparably links the Truth and Reconciliation Commission for Aceh to a national truth commission, does not preclude establishing a local truth commission in the absence of a national entity. In 2009, a coalition of human rights advocates presented a draft law to establish a local truth commission to the Acehese parliament. The local parliament announced a new commitment to revisit this initiative in 2012 (Pusaka 2012). After deliberation, consultation and comparative study, the Acehese

<sup>3</sup> Some victims who received *diyat* still feel that their right to justice has not been fulfilled. A female victim in Aceh Besar, for example said: “My child is dead as a consequence, then it is paid with 3 million rupiahs [approximately \$300] *diyat*. Is that justice? Not according to me, because my child's life has been tagged one life, 3 million rupiahs” (cited in Ross, Wandita and Samsidar 2008:23).

parliament, dominated by representatives from Partai Aceh (a political offshoot of the GAM), passed a law to establish a local truth commission by the end of 2013.<sup>4</sup> However, because local laws from Aceh must be vetted by the central government, this legislation is still languishing due to bureaucratic foot-dragging by Jakarta.

### Investigations by National Human Rights Commission

Since the fall of Soeharto in 1998 (known as “*reformasi*”), Indonesia’s National Human Rights Commission (Komnas HAM) has been vested with the powers to conduct investigations on cases of crimes against humanity or genocide, under Law 26/2000. Under this law, Komnas HAM would refer such cases to the Attorney General’s Office for prosecution in Indonesia’s human rights court, which has jurisdiction over these two categories of crime. However, the performance of this court gives rise to concern. Only three cases have been prosecuted so far (East Timor 1999, Abepura-Papua 2000, and Tanjung Priok massacre 1984) with a 100% acquittal rate. Although there have been initial convictions in the cases, every convicted person was subsequently freed on appeal (ICTJ and KontraS 2011). Komnas HAM’s referrals on seven additional cases are now languishing with the Attorney General’s Office.

Despite this, civil society groups in Aceh have pushed Komnas HAM to start investigations on five more key cases in Aceh. Subsequently, Komnas HAM formed an investigative team which stated in their preliminary findings released in October 2013 that serious human rights violations occurred during the armed conflict (Aritonang 2013). However, Komnas HAM is facing internal challenges that may detract from its effectiveness in carrying out its investigative functions.

### Similar but different: Mindanao and Aceh

The protracted conflicts in Aceh and Mindanao bear many similarities. In both contexts, there are claims for a distinct identity that pre-dates national independence, competing interests and claims on natural resources, and the desire to establish religious norms (Islam) as one foundation of governance.

Under the dictatorships of Marcos and Soeharto, respectively, both territories were ravaged by war and massive human rights violations. In the early years of transition after the dictators fell, both conflicts experienced escalations. A genuine political commitment from the central government was needed to bring the peace process forward in both countries.

<sup>4</sup> In November 2013, AJAR facilitated a five day workshop for members of the Aceh-nese parliament’s committee tasked to draft the local law.

Like the Indonesian parliament after the signing of the Helsinki MoU, the national congress of the Philippines is mandated to pass the Bangsamoro Basic Law, which lays the foundation for the establishment of the proposed autonomous region called Bangsamoro. Furthermore, the Moro Islamic Liberation Front (MILF), similar to the GAM in Aceh, is aspiring for some kind of formalization of Shariah Law as a result of the peace process.

Similar to Aceh, the conflict parties agreed to work out a program for transitional justice early on in the peace process. According to the Framework Agreement (FAB) signed by MILF and the Philippine government in October 2012, the transitional justice program should address the legitimate grievances of the Bangsamoro people and correct historical injustices and address human rights violations (VIII 12). Beyond that, the FAB contains the following provisions seeking to address past violations as a foundation for a lasting peace:

- Reparations for land dispossessions (VI.2), including recognition of indigenous peoples’ rights (VI.3);
- A commitment to addressing violations of human rights, civil rights, social, political injustice and impunity (VI.1);
- Decommissioning of MILF and transfer of law enforcement from the military to the police force of the Bangsamoro (VIII.5 & VIII.6);
- Provision of rehabilitation, reconstruction, and development programs for the Bangsamoro, specifically mentioning the needs of “combatants, internally displaced persons, and poverty-stricken communities” (VIII.10).

Building upon the provisions in the FAB, the Annex on Normalization, passed in January 2014, states that a transitional justice and reconciliation commission (TJRC) should be established to undertake a study and recommend appropriate mechanisms for transitional justice and reconciliation to the panels (H.1). Similar to Aceh at an early stage in the peace process, these provisions still need further detailing and will demand strong political commitments to be put into practice.

### Lessons from Aceh – Conclusion

As there are a number of similarities between the Aceh and the Mindanao contexts, many key lessons can be learned for Mindanao:

- The legalization of a peace agreement into national law is one of the first challenges to ensuring peace. Without strong advocacy and pressure by stakeholders, political decision makers at the national and regional level may pull back on commitments made at the negotiation table.

- International state and non-governmental actors as well as local civil society should take a role in demanding accountability measures during the early phase of the peace process. In the Aceh experience, accountability was sidelined as another pion in the political negotiations between local and national actors. International actors were reluctant to push the issue for fear of upsetting Jakarta, and a key opportunity was lost.
- Peace agreements often focus on former combatants but remain rather silent on victims. Victims groups should be strengthened and empowered to engage local and national government officials in a struggle of contextually appropriate truth and justice mechanisms. There needs to be dedicated strategic planning and resourcing for the long-term participation of victims from all sides of the conflict.
- In Aceh, victims groups are exhausted and disorganized by now. Many of their civil society counterparts entered into local politics, leaving an organizational vacuum. There needs to be a long-term strategy for increasing the capacity of local victims groups to deal with trauma, including documenting and sharing of their experiences, as well as for strengthening their socio-economic base.
- Victims need both acknowledgement and socio-economic support. Civil society and government actors can work together to achieve a balance of the two through creative and contextual processes. There needs to be a dedicated strategy to ensuring and planning for the long-term participation of victims from all sides of the conflict. Resources should be set aside for this purpose.
- Shariah law in Aceh has been formalized in a way that discourages women from speaking out<sup>5</sup> and overly focuses on women's modesty. There is also social and cultural pressure not to report sexual violence as it brings shame to the community. Rather than legitimizing discriminatory norms and practices, Shariah law should be interpreted and formalized in a process which is inclusive to the concerns of women. Safe spaces are needed for women to speak about their experiences.
- Programs that strengthen human rights and the rule of law, as well as address violence against women, should integrate acknowledgement and accountability for past crimes in the

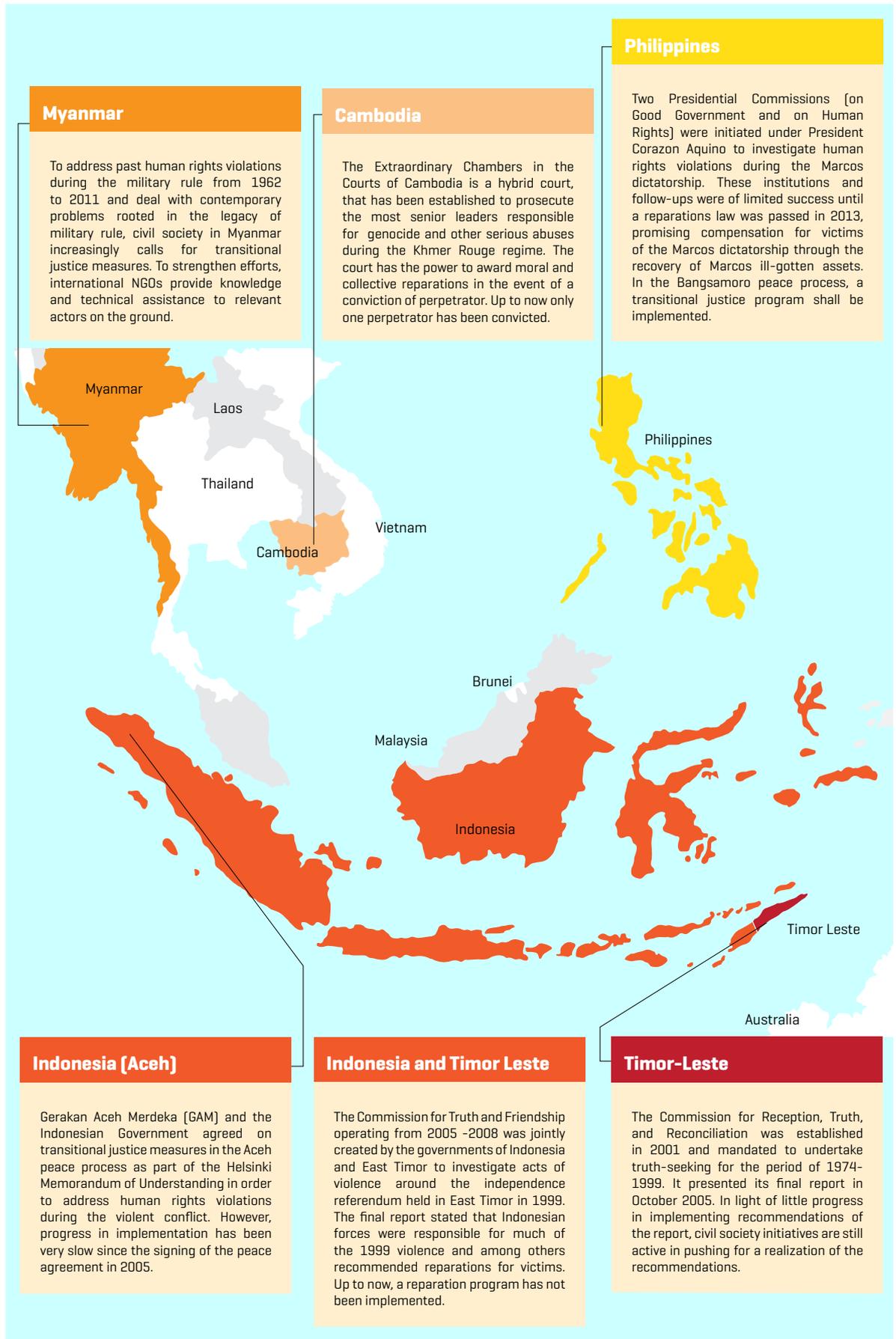
process of dealing with new issues. Justice and accountability measures are part of rebuilding trust in the institutions of governance and rule of law. Allowing perpetrators to roam free, without social, administrative or judicial sanctions, shakes the foundation of trust in the peacebuilding process.

Finally, building peace requires a long-term investment in strengthening victims' capacity, memorializing the painful experiences of the past and pushing for sanctions and credible investigations of those who committed serious crimes. Human rights and peace advocates should plan for a marathon, not a 100 meter sprint, developing long-term goals that can sustain the long march for justice and peace.

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<sup>5</sup> In November 2013, AJAR facilitated a five day workshop for members of the Aceh-nese parliament's committee tasked to draft the local law.



Transitional Justice in Southeast Asia

## Interview with Ruben Carranza

TRANSITIONAL JUSTICE IN  
MINDANAO AND THE PHILIPPINES

*In your opinion, which historical injustices and human rights violations are most relevant in the Philippine context? How did Philippine society deal with these past injustices?*

Since the beginning of its post-colonial and post-war history, the Republic of the Philippines has faced two peasant-based rebellions, fought a succession of Moro separatist movements, been ruled by a dictator and has never had a president – except the present one – whose power was not owed to, taken away, handed over or threatened by the military. In deciding how to deal with unredressed violations of human rights, it is tempting to focus on these episodes of violence and repression in recent history. But in the same way that elections aren't necessarily the most meaningful measure of democracy in developing countries where poverty and social inequality are fundamental barriers to political participation, making the acts of violence under dictatorship or the atrocities committed during armed conflict the sole markers for designing transitional justice policies can end up masking their social and economic antecedents and consequences. I think that it is equally important to examine the grievances motivating those involved in armed conflict and to peel away at the economic and social agendas underlying State repression and military intervention. These grievances and agendas, to borrow Zinaida Miller's observation, are often rendered invisible in transitional justice processes. They must not become, as Miller put it, mere background in dealing with the past (2008: 276).

What does this mean for the Philippines? This means that examining how grievances over the distribution of land and access to natural resources in rural areas drove armed conflict is as important as pursuing accountability for human rights and humanitarian law violations committed during these conflicts. This means mapping the assertions of Moro identity as well as the justice claims of indigenous communities in Mindanao and elsewhere in the country and understanding how they have intersected with violence committed by State and non-State armed groups. This also calls for investigating the role of the military (including its role vis-à-vis United States security and foreign policy) in empowering or dis-empowering civilian government and non-government stakeholders. Investigating and prosecuting the perpetrators while acknowledging the victims of violations of human rights – in its broadest sense of civil, political, economic, social

and cultural rights – that were committed during the Marcos dictatorship would have the greatest impact on transitional justice in the Philippines. The Marcos family and their allies have been able to mostly maintain the mutually-reinforcing impunity that came from combining political repression and profit from large-scale corruption. One worrying consequence of their continued impunity is the willingness of those too young to know or to remember the dictatorship to accommodate a version of Marcos that depicts his dictatorship as necessary, its repression justified, its corruption no worse than that of other politicians and his legacy as far better than that of the presidents that followed. This revision of history is clearly tied to the political ambitions of Ferdinand Marcos Jr.. Overcoming the Marcoses' impunity and holding them accountable is therefore not only a matter of dealing with the past; it is equally a matter of ensuring that truth prevails in the present and that justice can still happen in the future.

*How do you assess previous experiences of transitional justice in the Philippines? Is there a Filipino way to do it?*

Corazon Aquino confronted the Marcos dictatorship's twin legacies of corruption and human rights violations by creating two separate Presidential Commissions, one to pursue accountability for human rights violations and the other to pursue accountability for large-scale corruption. The Presidential Commission on Good Government (PCGG) – in which I served as a Commissioner fifteen years after its creation – was established two days after Marcos left for exile. The Presidential Commission on Human Rights (PCHR) was created more than a month later. The Aquino government was setting a precedent in transitional justice. No other government in a similar transitional setting had previously attempted to seek accountability for both kinds of abuses. The PCGG initially met some success. It obtained a freeze on Marcos Swiss accounts and prevented the transfer of Marcos assets in the United States. But its efforts at prosecuting and recovering ill-gotten Marcos assets floundered in subsequent years. On the other hand, the PCHR made a strategic decision not to carry out a wide and massive prosecution of Marcos-era human rights violators; instead, it decided to prepare for the prosecution of a fewer number of "test cases" with relative legal strength. This effort was not pursued after the PCHR's first set of commissioners resigned in protest

over the massacre of peasant and left-wing demonstrators in front of the presidential compound (also known as the Mendiola Massacre).

It also soon became clear that – like the Alfonsín government in post-military dictatorship Argentina or the Aylwin administration after Pinochet stepped down in Chile – Corazon Aquino saw herself as a transitional leader in a position of weakness vis-à-vis the perpetrators of human rights violations during the Marcos dictatorship who were still powerful or wealthy. The most notorious perpetrators were military officers belonging to the Reform the Armed Forces Movement (RAM) faction of the military. They saw themselves as instrumental in the fall of Marcos and Mrs. Aquino did not pursue their prosecution. They eventually led several failed coup attempts against her and mentored junior officers who plotted interventions in succeeding civilian administrations. Under Mrs. Aquino, no other transitional justice mechanism followed the PCHR.

The PCGG's failure to recover assets amassed by the Marcos family and their associates sooner than it did (the bulk of the assets recovered so far were returned in 2003) made impunity for human rights violations even more difficult to overcome. It allowed the Marcoses and Marcos cronies backing RAM and other military factions to fund destabilization and coup attempts. They funded the election of Joseph Estrada, a popular actor and admitted Marcos admirer, who handed back assets to Marcos cronies or allowed the prosecution of cases against them to wither. In other words, the failure to hold human rights violators accountable combined with the early failure to take back assets obtained by the Marcoses and their cronies allowed both sets of perpetrators to maintain each other's impunity.

Mrs. Aquino's son, the incumbent President, may have missed this lesson. Early in his tenure, he created a truth commission mandated to investigate corruption under his predecessor Gloria Arroyo but not the series of extrajudicial killings and forced disappearances during her tenure that implicated military officers whose impunity Arroyo had enabled. The Supreme Court decision that declared the Aquino truth commission unconstitutional was made along partisan political lines. Still, it demonstrated the difficulty of defending a transitional justice mechanism that targeted only one person and was not linked to systematic rights violations for which truth seeking would have helped disabuse perceptions that the commission was meant simply to punish Aquino's predecessor.

On the other hand, the bill providing reparations for survivors and victims of human rights violations during the Marcos dictatorship finally became law under the second Aquino presidency and he deserves some credit for its passage. I wrote the original draft of the law in 2003

to carry out a commitment made by the Philippines in the negotiations with Switzerland that led to the return of \$680 million in Marcos ill-gotten assets. When he was a legislator, Aquino asked me about the status of the draft and was one of its consistent advocates in Congress. But much greater credit for the reparations law belongs to human rights activists, victims' organizations and left-wing party-list lawmakers who, despite long-standing ideological disagreements amongst them, did not waver in their advocacy for reparations until the law was passed 10 years after it was drafted.

For now, it is this reparations law that represents the best opportunity for transitional justice in the country. Its implementation may still be resisted by the Marcoses, particularly as the presidential election approaches; but it will not face the funding problems that have stalled reparations programs in other developing countries. The Philippines reparations law is a unique mechanism in that it combines accountability for human rights violations with asset recovery efforts tied to the Marcoses' economic crimes. One-third of the recovered Marcos Swiss funds, around \$200 million, was set aside to fund the reparations measures in the law. It creates a reparations board that will administer the registration of beneficiaries and the distribution of compensation.

But the board will also have one special mandate that I characterized, when I was still drafting the law, as 'backdoor truth seeking.' The board will provide survivors as well as families of deceased and disappearance victims the time and space for truth-telling. While it may not be a fully functioning truth commission, the board can open up opportunities for memorialization, archiving and documentation. These, in turn, may help create the basis and momentum for resuming the investigation and prosecution of human rights violations committed during the dictatorship.

In my view, transitional justice is not only about the State creating institutions such as a truth commission or establishing reparations programs for those harmed by violations of human rights and humanitarian law. Transitional justice seeks to hold individuals and institutions accountable for committing, facilitating or failing in their duty to prevent violations of human rights and humanitarian law during armed conflict or under dictatorships. It also seeks to ensure that the victims of those violations are acknowledged and repaired. The work that human rights activists and victims groups have done to document and prosecute violations through civil and criminal cases before Philippine and foreign courts and to name and shame the perpetrators of those violations that continue to have impunity are part of transitional justice efforts in the Philippines. However, unless the political will, legal authority and financial resources of the State are made to support these efforts

or to initiate official transitional justice policies, it will be difficult to decisively overcome impunity. The State has to be directly involved. In the Philippines, non-government efforts may not be enough to overcome the effort to revise history, evidenced by the political rise of the junior Ferdinand Marcos. Time isn't an insurmountable obstacle. Brazil established its truth commission 27 years after the end of its military dictatorship in 1985. Argentina only recently resumed prosecutions of military, civilian and business leaders complicit in human rights violations of the 1976-1983 military junta. The Philippines now has a second chance at transitional justice.

#### *What can be lessons for transitional justice in Mindanao?*

The recent peace agreement between the Philippine Government and the Moro Islamic Liberation Front (MILF) isn't the first time that a peace agreement, including those involving separatist armed groups, has contained commitments to implement transitional justice mechanisms. Peace agreements in El Salvador, Sierra Leone, Aceh, and Nepal made the parties commit to establishing a truth commission and reparations programs. Without overly generalizing the outcomes of these very different contexts, one important lesson is that peace agreements do not, in themselves, lead to transitional justice. They can create space for truth seeking – as in the case of the Sierra Leone Truth and Reconciliation Commission. They can make immediate relief and rehabilitation possible for those harmed by the conflict, such as the Interim Relief Program that followed the 2006 peace agreement in Nepal (Carranza 2012) or the benefits given to former combatants and affected civilians through the Banda Aceh Rehabilitation Agency (BRA) after the Aceh peace agreement in 2005.

But transitional justice commitments in peace agreements have also been disregarded once post-conflict political arrangements become acceptable to former antagonists. It took almost 10 years before a truth commission bill was enacted in Aceh by provincial lawmakers representing the former separatist movement; the central Indonesian government is taking its time reviewing the bill. In some cases, negotiated impunity replaces the formal agreement to accept accountability. Nepal's peace agreement requires the investigation and prosecution of unlawful killings and forced disappearances during the ten-year conflict. But the leadership of Maoist ex-combatants and the Nepal army, through their respective political party backers, have since repeatedly tried to confer a blanket amnesty upon themselves. The 1999 peace agreement that ended the 14-year conflict in Sierra Leone provided for blanket amnesties. Had UN mediators not expressed reservations about this and the international community not pursued the establishment of the Special Court of Sierra Leone, Charles Taylor and others who were later found guilty of war crimes could have remained unpunished and free (Hayner 2007).

In my opinion, there are at least two lessons here: the first is that survivors of human rights violations and conflict-related crimes ought to have a seat at the table during peace negotiations and afterward; otherwise, their rights to truth, to reparation and to justice can be negotiated away and commitments to transitional justice easily forgotten. The second lesson is that the international community has to take an active, sometimes direct, role in ensuring that justice and accountability are part of the peace process and that the rights of survivors aren't set aside or exchanged for impunity during and after peace agreements are signed. I am aware that international monitoring has been an indispensable factor that led to the Mindanao peace framework. It will be important for

Photo: OPAPP



Signing of the Comprehensive Agreement on the Bangsamoro between GPH and MILF on March 27, 2014

this monitoring mechanism to follow the implementation of transitional justice measures.

The peace framework signed by the Philippine government and the MILF contains a short reference to transitional justice and leaves much of the work that will be done to the Bangsamoro institutions it creates. It will be important to learn lessons from other peace processes as well as to closely examine the gaps and opportunities from the country's on-going transitional justice efforts, such as the reparations law.

*Which particularities and issues in Mindanao need to be considered in shaping a transitional justice program?*

Mindanao is not just an island. It is a shared identity among communities with long, multiple experiences of co-existence and conflict over land and resources. In shaping a transitional justice strategy to address this past, the process is just as important as the outcome. The process must strive to be both inclusive and respectful of the overlapping and sometimes overlooked identities of Mindanao's people. Identity in Mindanao isn't only about religious belief, ancestry or membership in an indigenous community. It is also, and perhaps more importantly, about who has been denied access to livelihood, to political participation and to justice and redress for years of human rights violations. These experiences are shared by Mindanaoans, whether Muslim, Christian or Lumad.

An inclusive process of shaping transitional justice strategy means taking the time, making the effort and investing the resources required so that citizens are sought out and heard before policies that deal with the past are adopted. It is especially important to seek out those who have been marginalized because of gender, tradition or economic or social circumstances such as poverty, illiteracy or displacement. The process leading to the new peace agreement seems to have captured some of the ways by which public consultation and community participation can be done effectively; but I think it is still important to ensure that any policy adopted as a form of transitional justice isn't only debated and decided by those at peace negotiations or with access to the post-peace agreement decision-makers. The experience of civilians, women's organizations and victim groups in Sierra Leone who insisted on airing their views during and after peace negotiations there that led to the establishment of a truth commission and the Special Court of Sierra Leone is helpful to study. Tunisia's more recent effort to conduct extensive nationwide and regional consultation preceding the drafting of its law on transitional justice is also worth considering.

In shaping transitional justice policy for Mindanao (and the rest of the country), it will not be useful to casually borrow from countries whose approach to transitional justice was informed by opportunities and limitations that differ significantly from that of Mindanao's people.

The truth commissions of Argentina and Chile addressed forced disappearances, extrajudicial killing and torture. These truth commissions in turn recommended compensation, rehabilitation and symbolic forms of reparation, which their governments incrementally implemented. South Africa's truth commission only investigated politically motivated killing, abduction, torture or severe ill-treatment of any person. This was followed by a compensation program that only provided benefits for those who registered with the truth commission during its existence.

Transitional justice has evolved and expanded since then. In developing countries such as Timor-Leste, Guatemala, Chad, Liberia, Sierra Leone, Peru, Morocco and more recently, Kenya, Colombia and Tunisia, truth commissions and reparations programs have begun to deal with economic and social rights violations as well as with large-scale corruption, land-grabbing and the despoliation of natural resources. In Colombia, Peru and Kenya, transitional justice mechanisms have examined legacies of marginalization, internal displacement and violations rooted in access to land. In a few other countries, repression and marginalization linked to religious belief, gender and identity have also been considered as injustices that may be addressed through transitional justice mechanisms.

The examples of South Africa, Argentina and Chile are useful in thinking about accountability for violations committed during the Marcos dictatorship. They may be useful in dealing with episodes of the dictatorship's repression that happened in Davao or Sulu; but they may not be as relevant in dealing with the larger context of Mindanao's conflicts. It may be that the examples of developing countries that dealt with overlapping issues of identity, land, marginalization and the violence that accompanied conflicts over these issues may be more useful. As the mathematician George Box once observed about models and examples, "all models are wrong but some models are useful" (1987:424).

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Rosa Cordillera Castillo

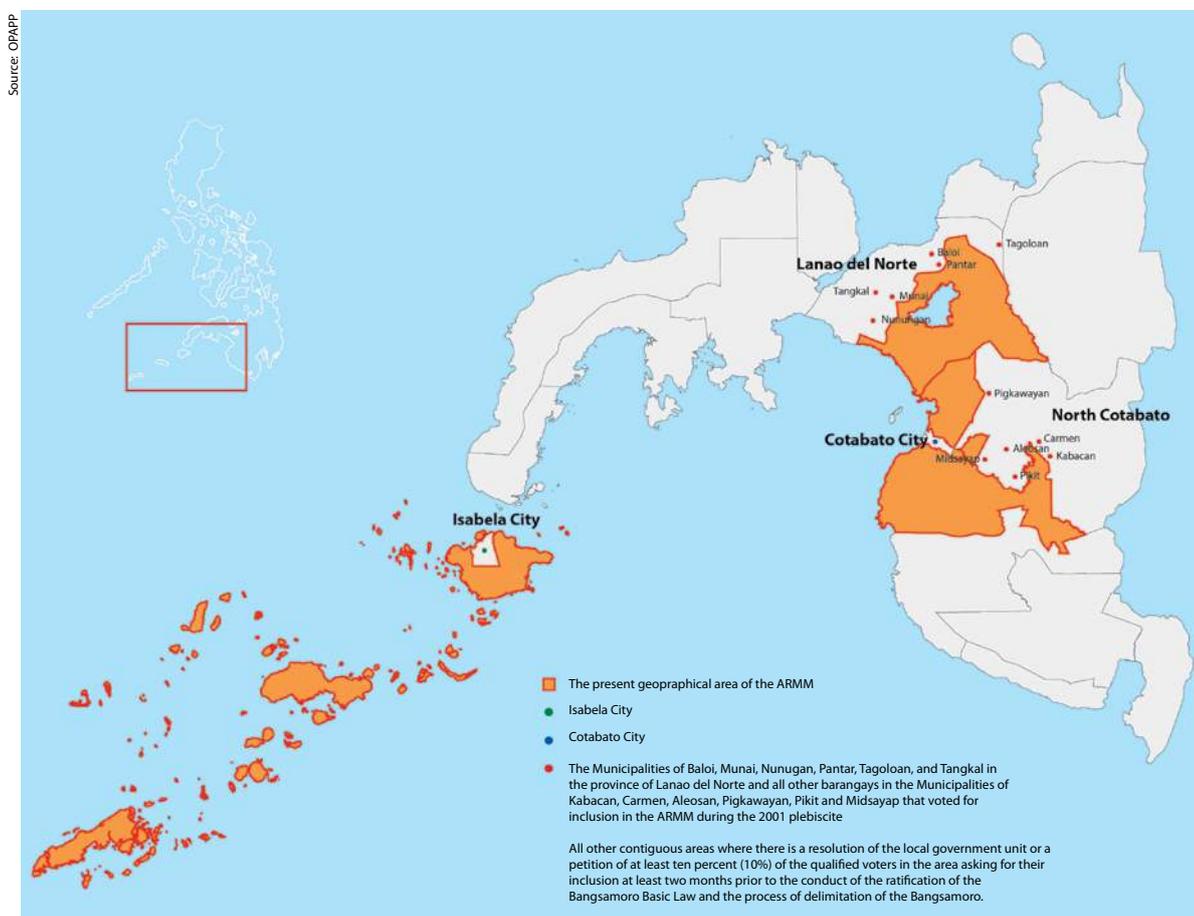
## PERSPECTIVES ON TRUTH, JUSTICE, REPARATION, AND RECONCILIATION IN CENTRAL MINDANAO

### Transitional justice in context

The signing of the Comprehensive Agreement on the Bangsamoro between the Moro Liberation Front (MLF) and the Government of the Philippines on March 27, 2014 potentially paves the way for the establishment of a transitional justice process under the future Bangsamoro Government. However, formulating ways of redressing historical injustice and dealing with the past in order to create a just present and future is a complex and much debated process (Stauffer 2013). I will not reiterate the points of contention and agreement regarding this which has a wide and rich body of literature. Instead I aim to address in this chapter one aspect of transitional justice which has often been invoked – that of its contextual

nature, or the sociohistorical, economic, and cultural conditions upon which it operates (Cf. Stauffer 2013 and Thiranagama 2013).

In particular, I will tackle the multiple meanings of truth, justice, reparation, and reconciliation, as well as their implications for a transitional justice process by groups of people in Central Mindanao who have been affected by various conflicts in the region. I argue that developing an effective mechanism of giving justice to massive forms of violence which affected people of different backgrounds must be informed by a knowledge of the diversity of understandings of the past and present, of various notions of truth(s) and the ability to tell it, the advantages and pitfalls of truth-telling, the weight of emotions,



Proposed core territory of the Bangsamoro

betrayal, mistrust and memory, as well as people's desires regarding justice, reparation, relationship with others, and reconciliation.

I conducted focus group discussions and key informant interviews with Maguindanao supporters of the MILF and the Moro National Liberation Front (MNLF), two Ilonggo communities, one Bisaya and one Teduray group, and two Manobo communities. This took me deep into the municipality of Alamada, up the mountains of Palimbang in Sultan Kudarat, into Upi in Maguindanao, and in the peace zone of Nalapaan in Pikit in order to surface perspectives on truth, justice, reparation, and reconciliation.<sup>1</sup> Insights also came from my ethnographic research in Balitabang,<sup>2</sup> a village of Moros<sup>3</sup> in North Cotabato amounting to a year of fieldwork between 2012 and 2014. I split time living in the village and going around what was once the Cotabato Empire Province, including Manili and Palimbang, sites of massacres of Moros, following the stories that my interlocutors in Balitabang told me.

My months of immersion in the daily lives of the Moro residents, many of whom are MILF members, gave me a deep understanding of the persistent violence, cycles of conflict and the resulting poverty that many Moros lived through and the subjectivities that have been formed amidst a violent lived experience. Despite the range of interlocutors I engaged, I do not claim to present here an exhaustive account of the meanings of truth, justice, reparation, and reconciliation. Rather, for the purpose of this volume, I am limited to offering broad strokes of this complex topic rather than delving deep into deep ethnographic analysis at the risk of oversimplification. It is, however, a start towards understanding these concepts as they are grounded on the lived experience with violence and on the particular subject positions of the research participants.

I will discuss in the next part of this paper the varied understandings of the past and its impact on everyday lives. This provides not only a ground upon which one can appreciate the complexity of the injustices that characterize the conflict in the region but also to understand the context and positionalities of each group, and the mistrust, suspicion, and betrayal that pervaded everyday relations. This is followed by the section on

perspectives on truth(s) and truth-telling, of which mistrust, suspicion, and fear are important mediating frames of consciousness. I then move on to the meanings and desires for justice and reparation vis-a-vis historical injustice and I close with a discussion of people's visions for reconciliation under which remembering, forgetting, and the weight of emotions are discussed.

### The rupture

If a transitional justice process is essentially about dealing with historical injustices to create a just present and future, then understandings of the past and its continuity with the present must form one of the process' fundamental foundations. This is particularly important because readings of the past are never monolithic, especially if one is dealing not only with "vertical violence" (i.e. between state and its citizens), but also with "horizontal violence" (i.e. between groups). The contestations and convergences in the narratives must be taken into account to see from which point one can render inclusive justice and determine how far back in history the transitional justice process should look.

The formation of the Ilaga<sup>4</sup> in the late 1960s and the eventual declaration of Martial Law in 1972 was a rupture which marked a profound shift in social relations in Central Mindanao. This occurred not only between Moros and state forces, but most pronouncedly between neighbors and ethnic groups, reframing how they relate to and see each other and themselves, thereby creating what Thiranagama calls "new forms of life" (2013:108). This is the period which many people look back to as the moment of disintegration of their inter-group relationships and the destabilization of their sense of security in their everyday lives. Despite the decades that passed since the 1960s, the communal violence that ensued persists in various degrees in its obvious and subtle forms such as in direct confrontations between groups, in the ease of accusing a member of the other group over crimes committed in their communities, or in the deep-seated fear, biases, and animosities that become fodder for feelings of insecurity in one's everyday life, the strength of which varies from place to place.

This sense of divide between pre-Martial Law and Martial Law years, or pre-Ilaga and Ilaga years was a common theme in my interviews and numerous conversations during the course of my fieldwork, regardless if they were with Moros, Christian settlers,<sup>5</sup> or indigenous peoples (IPs). These narratives indicate a clear break from a time that was characterized by good relationships and peace of mind to one that was characterized by fear, mistrust,

1 Number of focus group discussion participants: Balitabang (5 females, 4 males), Nalapaan elders (4 males: 1 Manobo, 1 Christian, 2 Moros), Nalapaan Manobo (5 females, 1 male), Nalapaan Moro (8 females, 2 males), Nalapaan Bisaya (4 females, 4 males), Teduray (2 males, 5 females), Alamada Ilonggo (8 females, 2 males), Palimbang Ilonggo (6 females, 3 males). Number of key informant interviews: Nalapaan (1 female Moro, 1 male Moro), Teduray (2 females), Alamada (1 male Christian), Palimbang (3 male MNLF members, 1 male massacre survivor, 1 female Moro). Total number of female participant: 45. Total number of male participants: 28. The higher number of female participants was because many male members of the communities were away at work during the interviews and focus group discussions.

2 This is a pseudonym.

3 "Moro" and "Muslim" are used interchangeably as self-ascription by my interlocutors. Christian settlers and indigenous peoples often refer to them as Muslims. But for this paper I will use "Moro" which is the preferred term of my interlocutors in Balitabang.

4 The Ilaga was a Christian vigilante group formed in the late 1960s supposedly with the support of Marcos and several Christian politicians.

5 I will use the label "Christian settler" in this chapter as it is the one currently used in policy discourse. However, in my dissertation, I utilize and analyze the terms "Christian," "Bisaya," and "Ilonggo" which are how Moro residents of Balitabang refer to Christian settlers.

betrayal, and violence.<sup>6</sup> To illustrate, an old Moro man recalled, “I courted several Christians and I would even sleep next to them. When Martial Law happened I could not visit them anymore. I was told I might get killed.” A Manobo woman in Nalapaan echoed the same sentiments. She said that during the time of her great grandfather “There was *bayanihan* (cooperation). People would give rice to each other. They were friends.” But more than friends, they treated each other like siblings, said Moros, Christian settlers, and indigenous peoples alike. This is probably best captured by what a Teduray Timuay (leader) said about relationships before the 1970s, “the house of the Moro was the house of the Teduray and vice versa,” a brotherly and sisterly relation that is also contained in the Tabunaway and Mamalu folklore passed on orally among the Tedurays, Manobos, and Maguindanaons. These narratives of the past are relevant in reconciliation and I shall come back to it in the last section of this chapter.

### Significant Others

The creation of the Ilaga and the declaration of Martial Law, however, created the conditions for the mass violence and social polarization that followed and which persists in varying degrees into the present. At this juncture, understandings of the past and placing one’s self and one’s group in relation to it diverged in people’s narratives. Each group’s narrative situated themselves as the victim of specific significant Others, that is the Other whom they perceived to inflict the most suffering on them.

Moros perceived themselves to have been victimized by the Ilaga, their supporters among the Christian settlers, and especially by the Philippine state primarily through its armed forces who sowed continued terror in Moro villages whether in times of war or in times of relative peace. It was common to hear stories of men running away whenever soldiers entered villages because they would have been taken, tortured or killed, an experience that only abated with the signing of the Framework Agreement on the Bangsamoro in October 2012. Women had to bear the soldiers’ searches of their homes as their fathers, sons, and husbands hid for fear of their lives. A United Nations investigation on the conflict revealed that in Moro communities, “military operations involve inherently indiscriminate tactics, such as aerial bombardment, artillery shelling, and helicopter strafing” and persons were abducted or extrajudicially killed for no apparent reason (Alston 2008). Massacres of Moros inside mosques, such as in Palimbang and Manili, and vivid images of Ilaga atrocities like the chopping off of their Moro victim’s ears or decapitating them proliferate Moro memories of the

1970s. Many of them lost lands to Christian settlers. I had not met a Moro during my research who did not have a relative killed, searched, violated, terrorized or their house burned by the military and/or the Ilaga. It is not surprising, therefore, that they saw these acts of violence as an attack on their collective identity and their religion, a campaign by the Philippine government to eradicate Islam and Moros in the Philippines.

Christian settlers meanwhile mirrored the narratives of Moros. They feared for their lives against Moros who also armed themselves first through the Blackshirts<sup>7</sup> and later through the MNLF and MILF. Several Ilonggo participants in particular told me of Christian families massacred by Moros and their continued sense of insecurity because of the presence of clan feuds (*rido*) and what they see as injustices encapsulated in crimes like thefts and killings that they attribute to Moros - some of them their neighbors - that persist in the present. Fear was an emotion that they repeatedly mentioned about their current state of mind. An Ilonggo group in North Cotabato said of their present relations with Moros, “They always betray us. They pass by here to go to the market. When they leave they will take our animals,” referring to crimes which they couched in ethnicized terms. To add to the conflicted relations between the two groups, many Christian settlers I talked to cannot accept that Moros want to get their lands back because, in their understanding, these lands were sold to their ancestors or were given to them by *datus* (Moro chieftains and nobility). Thus, in their reckoning of history based on their positionality, the Ilaga came to defend Ilonggo lands and communities from the Blackshirts and other Moro armed groups’ attacks. Further, they perceived the government soldiers to be on their side.

Many indigenous peoples were caught in the middle of the conflict and each group’s significant Other varies. Manobos of Nalapaan fled when fighting ensued between Moros and Christian settlers. They were not on the side of either group and they could not understand the conflict. An old woman asked, “why are Christians and Moros fighting each other?,” a puzzle they had to contend with as they became casualties of the conflicts between the two groups in their area.

Dulangan Manobos in Palimbang, meanwhile had a different experience. They point to the military and Christian settlers as the violators of their rights. In their narratives, the Ilaga in conjunction with the Philippine Constabulary (PC) took away their lands and terrorized them, killing between 50-70 Manobos in the three years that the Ilaga and the PC operated in their areas. This forced the Dulangan Manobos to retreat deep into the forest. When they returned, their lands had already been occupied and they experienced discrimination at every turn.

<sup>6</sup> These positive readings of the past are despite incidences of disharmony and conflict between various ethnolinguistic groups even prior to the 1960s. See for instance Stuart Schlegel’s ethnographic works on Tedurays which partly discuss the fraught relationship of this group with Maguindanaon Muslims before and during Martial Law. Accounts of lands taken away from Muslims through land laws that were disadvantageous to them also proliferate.

<sup>7</sup> Blackshirts was a Muslim vigilante group formed to counteract the attacks of the Ilaga.

But perhaps the most complex relationship with either Moros, settlers, or the Philippine state is that of Tedurays. All three are pointed to by Tedurays as the cause of their suffering since the upheaval of the 1970s, a suffering which persists until the present. To add to this complexity, Tedurays are divided into a faction who joined the MNLF and MILF and a faction that didn't. For clarity, the views in this paper come from the group that did not join the liberation fronts.

Tedurays from Upi and Awang have had the most extensive contacts with Maguindanaons, even adapting to certain aspects of Maguindanaon ways of life, while other groups that retreated deeper into the forest did not (Schlegel 1999). In Teduray narratives, when the settlers first came in the early part of the 20<sup>th</sup> century, they took away Teduray lands. The Tedurays I interviewed lamented that their ancestral domain has shrunk so much and yet there are still threats that what is left will be taken away from them, complaining that Moros and the Philippine government are also grabbing their lands. The former through violence and harassment while the latter through the logging concessions given to the Integrated Forest Management Authority in 2001-2002. They have a palpable fear that their identity as Teduray is under threat not only because their lands are disappearing but also because they perceive a lack of respect for their traditions and distinct identity, the latter becoming a more alarming concern as the current talks about the Bangsamoro Government and the Bangsamoro identity progressed. As in the cases of mosques desecrated by soldiers and the Ilaga, the attack on the Teduray self and collective was both physical and symbolic. This is seen for instance in the changing of Teduray place names into Christian ones or the marginalization of Tedurays in the Upi Agricultural School which they perceived as a marker of their identity, but is now dominated by homesteaders.<sup>8</sup> These experiences made them feel abandoned by the government which has not done much to correct these injustices.

What complicates the Teduray case in Upi is their relationship to the Ilaga. It is widely known that Commander Toothpick, said to be the founder of Ilaga, first recruited Tedurays in Upi in the 1960s. But while others joined the Ilaga out of their own accord, some were forced into it. A Timuay said, "If you do not join his group they will kill you like they did to my grandfather whom they turned into a target shooting board. If your wife is beautiful Toothpick will get her." The soldiers, in turn, offered no relief to the Tedurays. The massive evacuation of Tedurays in the 1970s was upon the orders of the military who accused the Tedurays that if they did not leave their lands, they are either supporters of Toothpick or supporters of the Blackshirts. Yet Tedurays also had a

conflicted relationship with particular groups of Moros. Their narratives were filled with stories of violence, land grabbing, and harassment committed against them. "It is painful," the Tedurays told me. "They do not view us as human beings."

But despite the variations on which group perpetrated which violence, everybody, regardless if they were Moro, Christian settler, or IP, suffered massively from the violence and terror that structured people's everyday lives from the 1970s onwards. Frequent evacuations, which those in North Cotabato observed to occur in three-year cycles, loss of property, destruction of livelihood, and disruption of the education of children, are experiences shared by all groups, which many have not recovered from economically.

An undetermined number of people also continue to suffer from the mental and emotional impact of their war experiences. By now, the phrase "we are all victims of history," uttered by Christian and Moro leaders and NGO workers, has become a common framing of the events of the past. But this invited assertions on who suffered the most. Some Moros would say, with much pain in their voices, that they were the most victimized because it was the Philippine state that attacked them and rendered their areas "no man's land" not only during the 1970s but also in the ensuing wars of the following decades. Yet other groups would say, "we suffered too." How can a transitional justice process accommodate these varied readings of the past and render justice commensurate to the sense of pain and victimhood of each group?

#### *Mistrust, suspicion, and betrayal*

One of the most profound aspects of this moment of rupture was the breaking of trust between neighbors and by extension the group to which the neighbor belongs to. Such a trust was present and sustained relationships in the pre-Ilaga/Martial Law years. But with the rupture of the late 1960s and early 1970s, suspicions abound as groups experienced betrayal after betrayal. While some communities such as in Nalapaan have been able to restore trust and some friendships between Christians and Moros have withstood the wars, many others are wary of members of the other group, even if they have friends from that group. As an old man in Balitabang said, "The brotherly relations never returned. Trust is still precarious. The Moros still do not trust the Christians. Trust was destroyed because it was the Christians who told soldiers who the Moros were (in their neighborhood)." Again, many Christian settlers I interviewed mirrored this sentiment. One Bisaya woman said, "There was a gap. Christians saw Moros as killers because they were Blackshirts. The same for Moros who saw Christians as Ilaga." Several Christian women acknowledged that their suspicion and lack of trust toward Moros have not yet disappeared and they still see the latter as their enemy.

<sup>8</sup> The school was built for the Tedurays in 1919 by Captain Irving Edwards, an American soldier turned educator.

Mistrust, suspicion and negative perceptions of the Other have been so deeply ingrained in the psyche of many. While people would often tell me that relationships now are harmonious and in many cases they truly are, prying deeper into their sentiments would sometimes reveal otherwise. This complex performance of harmony that conceals misgivings is seen in an old Moro man's statement, "In front (what is displayed on the face and actions) I am okay (towards Christians). But deep inside I am not. I know who the Ilaga are. I saw everything they did." An Ilongga meanwhile similarly said, "In my view, on the outside, it seems our relationships are okay. But deep inside it's not... This is because of our experiences." This performance is, however, necessary to prevent the collapse of everyday transactions and relationships.

The continuous experiences of violence, whether in the form political violence or crimes, injustice, and betrayal, coupled with narratives of remembering the atrocities of the Other passed on from generation to generation have become potent reinforcements for feelings of mistrust and suspicion which many acknowledged had become deeply embedded in their selves. Particularly for the Ilonggos in North Cotabato and the Tedurays I interviewed, they find it almost impossible for this mistrust to disappear should the current situation of fearful existence persist. The specific configurations of mistrust, suspicion, and betrayal have important bearings on a transitional justice process as they implicate the possibility of reconciliation of communities with each other, what kind of justice people desire, and their willingness to tell their truths.

### Truth(s)

The varied accounts of the past problematize the notion of truth, or a singular narrative of the rupture that was the late 1960s and 1970s, and the decades of violence and animosities that followed. "Truth emerges in multiple sites, simultaneously," according to Stauffer (2013:38), who had been writing about the South African Truth and Reconciliation Commission. If such is the nature of truth, then how can one reconcile the various readings of the past? How will transitional justice be appropriated if the categories between perpetrator and victim are blurred, i.e. a victim can be a perpetrator and vice versa, such as in the case of communal violence? What will be the role of what Stauffer classified as "personal or narrative truth" in a potentially legalistic procedure that privileges "forensic or factual truth" (2013:39)? And on what do people base their assertions to truth and what do they think of the process of "truth-telling?"

"Truth" for all those I interviewed is based on their experiences, and so they assert that all that they told me is the truth. Or to put it another way, one cannot be denied their personal truth because they firmly ground it on their experiences. As Mohalikin Piang, survivor of the Malisbong massacre in Palimbang, told me, "Truth

Photo: Keith Bacongco



Class held in a Madrasah in Aleosan, North Cotabato

is the actual things I saw and felt inside the mosque." This points to people's unshakeable ownership to truth which privileges personal or narrative truth. If there is contestation to the truth, the presence of evidence and testimonies of witnesses can attest to the truthfulness of the event. Only then does it become "forensic or factual truth," which hinges on "scientifically corroborated evidence" (Barucha 2001 cited in Stauffer 2013:39). This truth might, however, become the dominant kind of truth in a transitional justice process which could marginalize the truth of many others especially if evidence is lost, unavailable (e.g. no arrest warrant, police report, medical record, or birth certificate), or the story of the victim cannot be corroborated (Cf. Stauffer 2013).

Most of those I talked to welcomed the opportunity to tell their experiences in a truth-telling process in order to get justice, although some groups, such as the Tedurays and Ilonggos, are fearful of the consequences of truth-telling. Truth-telling which is often equated with surfacing what is inside them (*salobin*), or their sentiments and pains (*sama ng loob, masakit a ginawa*), is seen as a prerequisite for peace by Moros, settlers and IPs alike. One Moro woman said, "If we find out what the truth is there will no longer be chaos." Indeed this is a process that has been utilized in "culture of peace" activities such as in Nalapaan where dialogues between the three groups allowed each to know their biases and desires with the goal of fostering respect for one another. One Manobo participant of these dialogues said of her experience, "When you unload yourself of the pain inside (*sama ng loob*) you cry and cry. After that you will feel light." There is willingness among Moros – regardless if they support the MILF or MNLF – to

tell their stories despite the potential risks of doing so. One woman in Nalapaan said, “Even if I die, as long as I will tell the truth. I only fear Allah.” Like Mohalikin Piang who wants the world to know what happened in Malisbong, my Moro interlocutors are also keen to let the wider public know of their plight.

But for some people, fear overrides their desire to tell their experiences which would complicate a truth-telling process, and potentially lead to conflict. An Ilonggo told me, “If they (Moros) were not here I would tell a lot. But I fear telling everything for my family. We have no justice.” Others in the same group chimed in, “We don’t want to tell it to Moros because they will get angry. We also have families. They will be involved. They (Moros) kill even the old and the young,” referring to the clan feuds they know of. This particular group of Ilonggos has experienced harassment and theft by some Moros living in their vicinity. This fear of retaliation for what they will say is shared by Tedurays and another Ilonggo group. As a Teduray woman said, “We are not always open about what we went through because it might be used as a ‘weapon’ against us,” indicating fear that what they say can harm them.

“It shouldn’t be that they [government] just listen to what happened, yet they do not do anything. What is the solution? The painful events should be given a solution.”

[Maguindanaon woman in Nalapaan]

In addition to fear of retaliation, there is also a sense of resignation that nobody will listen to them. A Teduray said, “Because nobody is listening to us, we just say ‘Only God knows.’” While an Ilonggo asserted, “Everybody knows this is what happened to us... we will just leave it to God.” The invisibility of their suffering is captured in the oft repeated phrase by many Moros that they want their stories “to be part of history,” i.e. written in books and studied by future generations, not only by Moros, but by the wider Filipino public.

In spite of the fear and the sense of resignation, there was still a general desire expressed by the research participants for the government to listen to their problems. A particular format was not discussed, except by Tedurays, who proposed a truth-telling process. They suggested that the *ustadz*es of the Moros and the *kefeduwans* (legal authority and moral leader) of Tedurays should discuss and find ways to resolve problems. The atmosphere should be one free from fear and insults in order for the process to be successful. A Timuay said, “We will tell them our sentiments and they should tell their sentiments and where we can reconcile... Our anxieties will disappear.”

These statements evidence the continuous resonance of fear and mistrust between groups due to the betrayals that people have experienced through the decades. A system that will ensure people’s security despite what they will say, a system that is transparent and that will actually deliver justice can help people trust the process of truth-telling, a process which people think is important in building peace, restoring relationships and giving justice. As an MNLF fighter told me of his desire for a transitional justice that the Bangsamoro government might establish, “If the process is orderly it is as though the pain (from injustice) will be cured. As long as nobody tricks us. It should be transparent. What they agreed on should be implemented. If they promise something they should do it, otherwise they would have just tricked us.” A potential implication of this trickery is that the sentiment of some Christian settlers and Moros who have gotten tired of telling their stories and reliving their trauma because it leads to nowhere and injustice still pervades their everyday lives might become widespread. As such, they would have been betrayed once again, this time by a transitional justice mechanism.

## Justice

One of the crucial ways through which betrayal of the victims by a transitional justice process can be avoided is grounding the concept and operationalization of justice on people’s desires for a just present and future given their long and drawn out experiences of injustice. Diverse justice systems exist in Central Mindanao including the state, Shariah courts, and indigenous justice systems, each based on its own principles. Interestingly, these diverse justice systems were rarely invoked by people when communicating their desires regarding justice vis-a-vis historical injustice. This is likely due to the nature of the injustices: these are not in-group injustices but involve agents and persons of the out-group for which the Shariah court and indigenous justice systems are not commonly used for. Nevertheless, there were convergences in the desires of those I talked to as their answers echoed some of the underlying principles of justice in these systems.

Justice is conceived of in both abstract and concrete forms. In its abstract form justice is thought of as peace, equality, and unity of people. “There can be no justice if there is no peace,” an old Moro in Balitabang said. Concretely, however, across the groups I talked to, justice is defined as providing solutions to the case at hand. If a solution is rendered, then it is seen as a *salve (gamot)*, a medication for the pains that the violence and conflicts caused throughout the years with most going back only from the time of the Iloga onwards, except for Tedurays, who want to go back as far as 1901 when the first homesteaders encroached on their lands. This concept of justice is understandable if we ground it on the emotional weight of the violence and injustices. Injustice

is seen as unsolved problem or case. This seemingly simple definition however betrays its profound effects on relationships and subjectivities captured by this statement of a Moro woman, "It is painful to the heart if there is no justice." She is not alone in this sentiment as most of those I talked to would characterize injustice in terms of its emotional weight and would gauge justice in terms of its effect on the pain one feels.

#### *Punitive justice*

Despite the violences committed by known actors (e.g. specific agents of the state) and the pain of these injustices, punitive justice was not a prominent answer of the research participants. This does not mean that it has not been done or that it is not desired. A victim of the Malisbong massacre, for instance, said that those who participated in the atrocity, should be punished. This was however, not a widespread desire. Several things could perhaps explain this seeming lack of centrality of punitive punishment, at least among Maguindanaons. A Maguindanaon saying, "the sin of Pedro is not the sin of Juan," means that one should not punish a person who did not commit the crime. If one cannot find Pedro, Juan should not be punished. Some Moros also told me that the perpetrators are long dead now or had bad karma because of their deed, while another pointed to their poverty as hindering them from filing a case against perpetrators, which they perceived would cost a lot of money. Thus many MILF and MNLF supporters I interviewed just wanted the soldiers, Citizen Armed Force Geographical Units (CAFGU) and Civilian Volunteer Organizations, which they claim are the descendants of the Ilaga, to leave the area because they fear them. "They should go back to their *inged* (place of origin or community)," an old man in Balitabang said.

#### *Justice as reparation*

More significant than punitive justice was reparation which is how all of those I interviewed said is the primary way they can be given a salve for the pains caused by injustice. The concept of reparation is not distinct from the concept of justice, and this is echoed in state, Shariah and indigenous justice systems where the imposition of fines that would benefit the aggrieved party in order to settle a dispute is a common practice. In fact, for many of those I talked to, reparation is the operationalization of the concept of justice vis-a-vis historical injustice. It is forward-looking rather than backward-looking in the sense that the concern is with the living: the welfare of the children and their future, and to ensure that the historical injustices will no longer be experienced by the current generation.

Very common across the groups was the desire to use the past to ensure a good future for those who are still alive. "To survive", one MNLF fighter said whose family members were killed in the Malisbong massacre. Justice is, "To have livelihood, for the children to be able to study."

An Ilonggo in Palimbang whose livelihood was destroyed by the wars that ravaged their area and which sunk him in debts until today quietly said, "Even if what was lost will not be returned, as long as we will be given assistance. As long as it enables us to live." Fixing houses destroyed by the conflicts, giving back lands and the animals that were lost, providing education for the children, and having livelihood were mentioned by all groups. They - Moro, Christian settlers, and IPs - view the above as *tabang*, or help from the government. Specifically, combatants of the liberation fronts desire that they be given benefits for the long years they served the movement, obviously addressing this desire to the MNLF and MILF.

*Tabang* could come in the form of money as well but how this money is framed matters. The Moros I talked to were adamant that money is not payment for the dead, because one cannot pay for the dead in this kind of violence. The dead would be angry should this be done. Rather, for the Moros in Palimbang who experienced the Malisbong massacre wherein soldiers killed over a thousand men,<sup>9</sup> it is payment for "moral damages." The moral damages are the houses and other properties that were destroyed and the lives disrupted by turning Palimbang into a "no man's land" for Moros. Therefore, payment for moral damages is also assistance to families left behind. Mohalikin Piang even asserted that there should be a special program for survivors and descendants of massacre victims where health services, education, and livelihood are provided. These are forms of help that they demand from the government, even though there is high criticism of how the government renders justice that favors the rich over the poor, or favors one group over the other.

The story of a Moro woman, whom I shall refer to as Kanisan, shows the struggle in applying for reparation - difficulties which had discouraged others from applying as well - and its paradoxically painful, but rewarding, end.

In 1979 Kanisan's husband was a high school student at Southern Christian College in Midsayap when they were ordered by soldiers to go out of the school premises. He was taken to Awang where he was tortured and detained for three months. After his ordeal Kanisan's husband developed a heart ailment and suffered for decades with his weakened body. He suffered so much that he found it difficult to work. In 1993 her husband applied for reparation. The process was difficult, she said. The paper work needed was not easy to accomplish and they had to go to Kidapawan, three hours away, for its processing. They had to borrow money just to pursue their claim. In 2010 her long suffering husband finally passed away and he still did not get his reparation. In 2011, one year after his death and 18 years after he applied for the claim, he was finally awarded 50,000 pesos. Kanisan said, "It's painful that the one who suffered did not taste it (the money). But it is still okay because the children were able

<sup>9</sup> Based on a survey conducted by the survivors.

to study. Even if he has died he was still able to help. My *masakit* a *ginawa* (pain) will somehow be healed.”

How much compensation will ease the pain of those who suffered? Mohalikin Piang’s sentiments about the recent release of money to Martial Law claimants reveal the complexity of assigning a monetary amount.

50,000 pesos? Can it make the pain of those who went through the massacre go away? It’s better if they can give 50,000 quarterly. I said it seems it is only for one time. Can this cure the problem from the massacre? I think it is better if there is a special program specific for massacre victims. Education of the children, health services, livelihood... This doesn’t mean that it will be totally settled or that justice would have been met. At least you will somehow feel that this is the help of the government. Then they (victims) might feel that their lives have changed... Then they can focus on their livelihood. You know the 50,000 it seems as though it belittles the rights of the massacre victims.

The “payment for moral damages,” as Moros in Palimbang put it, or the *tabang* given to the victims, is in itself seen as recognition by the state of the injustices that occurred. Except for Moros who desired to have their stories become part of history books, non-material reparation was not a major concern of other groups until I brought it up in the interviews. Once asked, for instance, Dulangan Manobos thought that a museum or a book about the atrocities they suffered would be a good thing so that others, especially the international community, may know their plight. This is also for children to not let the past happen again, “for them to have a guide,” as a Dulangan Manobo leader said. While Tedurays I interviewed said, “It is okay because the dead will be recognized. We will remember

our relatives who died. The pain will be lessened. Their lives were not in vain.”

The challenge, however, for realizing these desires for justice in a transitional justice process is how inclusive it will be, how accessible will the process be for victims, many of whom are living below the poverty line, and how realistic it will be to deliver the means through which people can survive the present and have a viable future.

## Reconciliation

### *Between memory and forgetting*

The past, its “recovery and uses,” as Todorov (2001:12) puts it, and its continuity with the present, is the dynamic and active center of a transitional justice process. As such, truth-telling is an integral part of the process, and so is memory - the ways in which it is deployed. Remembering past atrocities, and its flip side of forgetting, are two tensions that seem to pull my interlocutors in two different directions. In my many months of living in Balitabang, I was struck by what I would call the people’s *will to remember* the past atrocities, particularly the massacres and the time of the *llaga*. This will to remember is encapsulated in narratives about violence, in radio programs, and in sermons in the mosques. The memory of the violences “contributed to structuring social action in the present” (Malkki 1995:105), and was used to mobilize Moros for the needs of the present struggle and a vision for a future Bangsamoro. It had become a center of identification. Statements such as, “if you see the children of the *llaga* and CAFGU, you will remember what has passed,” or, “These are unforgettable until the end of my life. I saw many of the things that the government did. It is very painful to my self,” and even more commonly, “We should not forget the massacres so that they will not happen again,” proliferated narratives about violence.

Yet, there were also invocations to forget, especially now that the security situation is much improved with the signing of the Comprehensive Agreement on the Bangsamoro. One old man in Balitabang said, “Once it is stable, we should forget the past,” while an MNLF member in Palimbang said, “Some people forget the massacre once they have work. They would say, ‘we cannot do anything anymore because they have already died.’” This indicates a perception that the past is a heavy weight on the present. A woman survivor of the Malisbong siege by the Philippine army said that despite the deep pain (*masakit a ginawa*) she feels, “The past should be let go. We should concentrate on the present, on the education of the children, on our livelihood.”

The experience in Nalapaan should instruct us on the possibilities of reconciling communities and the role of memory and forgetting in such a process. Nalapaan was the first Space for Peace created in 2003 after the Christian,



Photo: Steven Griffiths

The lowlands of Central Mindanao

Moro, and Manobo residents of the village banded together and demanded that armed groups do not involve their village anymore. Groups such as the Oblates of Mary Immaculate and Tabang Mindanaw helped them by conducting a series of dialogues and trainings aimed at a “culture of peace.” One aspect was to provide a venue and mechanism for the telling of hurts and biases such as what they don’t like and like about the Other, even telling stories that directly implicate specific persons. One leader said of their desire, “We are all human beings. One blood. We should return (the good relations) of the past.”

The outcome was that it fostered better respect and understanding for each other’s way of life, and as a consequence, a more peaceful everyday life. Inter-marriages between the three groups was seen as a manifestation of the reestablishment of relationships that were broken by violence, betrayal, disrespect, and mistrust. Now many are kin regardless of ethnicity. Once the understanding and reimagining of the Other as an ethical being had been reestablished, the leaders encouraged their constituents to let go of the past because to cling to it would prevent them from engaging in their livelihood, from looking forward to their future. A Moro leader said, “We should not bring back the bad experiences of the past. We should not plant them in our minds. We should not plant anger towards the other.” “Forgetting” does not mean silence because they are still willing to tell their stories if they are asked. Forgetting in this sense means “letting go” or not letting the past structure actions and relationships in the present rather than obliterating the event in one’s memory. This “letting go” signifies agency, something willfully done to continue with life in its normalcy. A Moro leader said of their experience, “It was like we were born anew.”

But is forgetting really possible? While Nalapaan is hailed as a success and emulated by other villages, my interviews with ordinary members of the village revealed that it is not so easy to let go of the past and of pain despite the reconciliation of neighbors, especially in a situation where justice has not been achieved. For instance, an old Moro woman said of her bitter war experiences and her losses not yet repaired, “It is like a thorn in my heart that will not go away. Until I die I will not forget.” This is similarly echoed in other parts of the region. Mohalikin Piang said of his will to remember the Malisbong massacre, “We don’t want to forget because we want what happened to be written in history. So that the future generations may know. Until now I see there is no justice. If there is no justice now, it might happen again.”

In a different vein, for Tedurays, once justice is rendered and accepted in their Timuay justice system, the event should not be relived and mentioned again in a negative light, “It is now buried in memory,” a Teduray said. This is similar to an Ilongga woman’s statement in Palimbang, “If

you are not in dire straits your perspective is good. You will forget what happened (in the past). Because every time you are in dire straits you will remember what your life was in the past. You will think, ‘if the chaos did not happen our lives would not have been like this.’” These statements show that remembering, forgetting, and justice are intimately linked with each other, where the possibility to forget the atrocity, i.e. to let it go, is contingent upon the delivery of justice.

The emotive language also indicates that like memory and forgetting, emotions associated with experiences of violence and injustice that structure everyday relations are also contingent upon the delivery of justice. Emotions are significant because they “are the way we make fundamental judgments on the rightness or wrongness of social acts” (Luhmann 2006:355) and powerful emotions are a primary motivating force in human action (Rosaldo 1989:16). The narratives of injustices of my various interlocutors were replete with a particular configuration of emotions revolving around pain, fear, sadness, and anger and the deep embeddedness of such emotions in the self that many likened to a thorn, a visual and powerful image of the pain itself. Fear, meanwhile, is imagined as a seed planted inside people’s hearts and minds that breeds mistrust and suspicion. Given such powerful emotions that persist in varying degrees in different individuals, is it possible to also let them go? For many I talked to, getting justice for the offenses they experienced is desired in order to ease the pain of injustice but they also acknowledged that the pain and fear will never truly go away, even if it may be significantly lessened. A transitional justice mechanism should therefore recognize the limits of justice vis-a-vis such painful emotions.

#### *Chances for reconciliation*

What then for reconciliation? Is it possible to reimagine the Other (whether state forces, ethnic groups, or specific individuals) as an ethical being despite the pain that lingers? A subtext of the narratives of my interlocutors is the creation of an essentialized and totalized Other. Words such as *sila* (they) and *kami* (us) proliferate stories, clearly demarcating the lines between the in-group and the out-group. But it is remarkable that despite this subtext of Othering, there was also the presence of reflective statements contradicting this totalizing construction. A Teduray said, “not all Moros or soldiers or settlers are bad. In the same way that not all Tedurays are peace-loving.” The same was invoked by an agitated group of Ilonggos I talked to who admitted that not all Moros are violent and that most of those who instigate chaos are *dayo* - people from outside the community. Some of my Moro interlocutors would spread out their fingers and tell me, “People are like fingers in a hand. They are not all the same. There are good Moros and bad Moros just as there are good Christian and bad Christians.” Proof of these are stories of friendships rekindled after wars such as in

Nalapaan and Palimbang, or even friendships which have withstood wartime.

Another striking aspect of the the foregoing discussion is that across the groups I interviewed there was a desire to go back to a past of sibling-like relations and a time when soldiers were not harassing communities. An MNLF member said in the mixed municipality of Palimbang, “We want Christians and Moros to unite... The Bangsamoro is not only for Moros but also for our IP and Christian siblings.” A Teduray woman meanwhile said,

There should be no chaos. People should love each other. Nobody should destroy the relationship. Even if one embraced Islam, we are still siblings. We should just discuss the division of territory...

The desire for the “normalization” of relationships is imagined as a future when one can sleep well at night without fear that in the middle of their slumber they would need to evacuate, when one can leave their farm animals without worry of it being stolen, when one can go to their farms without fearing for their lives, when one can walk the streets and travel without anxiety of getting attacked, and a time without clan feuds. It is a time when they can concentrate on their livelihood and put their children through school. And when, for groups such as the Tedurays I talked to who lost lands to homesteaders, their remaining ancestral domain will be respected. These are the “normal” in a Teduray woman’s statement about transitional justice as “the abnormal becoming normal,” that is when the situation of fear, anxiety, pain, and violence that has characterized people’s everyday lives since the late 1960s would go back to what it was before the rupture, a notion shared by Moros and Christian settlers alike. For Tedurays, Dulangan Manobo, and the residents of Nalapaan, this peaceful co-existence hinges most importantly on *adat*, or respect for each other. A Dulangan Manobo said, “We want from the government to treat us equally with respect so that we will not be hurt. It shouldn’t just be for Moros or Christians.”

For Tedurays in my interview, the kinship between Tabunaway and Mamalu should be revisited and rekindled, but only in a genuine manner, not in a way that would endanger their distinct identity. A Timuay said of the process, “It should not just come from their (Moros) lips. They should be true, sincere. If they are sincere the results will be good.” The Tabunaway-Mamalu folklore has been utilized by NGOs and the MILF in “kinship renewal” activities aimed at fostering a particular kind of relationship between Tedurays and Moros which are at times contested by Tedurays who claim that their distinct identity is being subsumed under the Bangsamoro identity. After one such activity sponsored by a Teduray organization wherein Moro and Teduray women role-played the folklore, the participants cried. Upon reflection

on this, a Teduray participant said, “It is better if we return to thinking about the closeness of each other. There are some from their group (Moros) who accept that we really are siblings.”

A transitional justice process can seize this kind of reflexivity and the desire for the relations and everyday life during the pre-Ilaga/pre-Martial Law past and create something productive and restorative of relationships currently broken. That people can look back to a time of better relationships and that they want to be reconciled are important starting points for a society that might undergo a process of transitional justice.

## Conclusion

The foregoing discussion shows the complexity of addressing transitional justice in the context of the rupture of the late 1960s and the subsequent wars that followed. These involved conflicts not just between the state and a particular segment of its citizens, but also between citizens, that at times blur the categories of victim and perpetrator. The legacy of this rupture, as seen in continuous injustices that structure everyday lives in the present, is also manifested in the poverty the wars brought and in the mistrust and fear that pervade relationships in varying degrees. Despite these, or perhaps because of these, the people I interviewed desired to tell their truths in a process that is trustworthy, transparent, and that leads to justice. They also desire to reestablish the trust and relationships that were broken during the time of the Ilaga and Martial Law.

The reestablishment of relationships can, however, only happen if the injustices and the pain that they engendered in people are given a salve. This is mainly achieved through the “*tabang*” - that is material (e.g. livelihood, assistance in rebuilding houses, provision of scholarships and education for children, health services, compensation for farm animals lost and for the relatives who died in the violences) and non-material reparation (e.g. memorialization) – from the government that would enable victims and their descendants to have a better present and future. Beyond reparation, the government and liberation forces should also create the conditions in which people can live without fear and where distinct identities and human rights are respected. These entail political and economic transformations beyond that of relations between neighbors and ethnic groups. These actions encapsulate justice, the delivery of which would allow people to move on and let go of the past, that is to not let it structure their present actions and relationships anymore. This, in turn, paves the way for reconciliation and the reimagining of the Other as an ethical being.

A transitional justice process should deliver justice that is commensurate to the pains and suffering of individual

victims and their group. It should contextualize the rendering of justice, reconciliation and truth-telling by, among other things, incorporating the visions and desires for truth, justice, reparation, and reconciliation of affected communities while being sensitive to the pervasive feelings of mistrust, suspicion, fear, and betrayal that structure everyday relationships. These are important given the varied and often competing narratives and readings of the past, the weight of memory and its accompanying emotions in the present, the “new forms of life” (Thiranagama 2013:108) engendered by the temporal, symbolic, and physical break of the late 1960s, and the complex layers of betrayal and feelings of fear and mistrust that often break out in violent confrontations over the smallest of reasons. In addition, there are continuing experiences with injustice, whether in the form of crime or political violence, both of which destroy one’s sense of security not only with one’s self, but as well as with others. A transitional justice process that is not transparent, inclusive, and trustworthy will create another layer of injustice, reinforce the sense of mistrust and betrayal, and ultimately produce conditions for continuing violence.

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### Timeline of armed conflicts and peace negotiations between the Government of the Philippines and the Moro liberation fronts

1968	MARCH - In the Jabidah massacre more than 27 Muslim army recruits, who supposedly were undergoing secret commando training at Corregidor Island, are killed.	2009	Ceasefire between Government and MILF forces is re-imposed and peace talks resume. Both sides agree to form the International Contact Group (ICG) and the IMT's Civilian Protection Component.
	MAY - Amidst the backdrop of crystallizing Muslim discontent due to the Jabidah massacre, the former governor of the empire province of Cotabato, Datu Udtog Matalam, leads the formation of the Mindanao Independence Movement.		2010
1969	Anti-Muslim politicians (known as the Magic 7) in the Central Mindanao area come together in September to formally organize the Ilaga movement.	2011	JANUARY - Informal talks are held in Malaysia, marking the first face-to-face meeting between both sides under the Aquino administration.
1971	Violent conflicts erupt among Muslim and Christian civilians, and among politicians. This is highlighted by several massacres such as the Manili massacre in Carmen and the Tacub massacre in Kauswagan.		OCTOBER - Armed encounters between Government and MILF forces take place in Al-Barka municipality. Despite calls by some sectors for an "all-out-war" against the MILF, the number of armed encounters between the two forces drop to zero the following year.
1972	The Moro National Liberation Front (MNLF) is founded by Nur Misuari to struggle against the Philippine government and seek independence for the Bangsamoro land.	2012	OCTOBER - At the end of the 32nd round of Exploratory Talks, the Panels announce the forging of the "Framework Agreement on the Bangsamoro" serving as the "overarching architecture for the Mindanao peace process".
1976	The 1976 Tripoli Agreement provides the framework for the creation of an autonomous region in Southern Philippines and identifies 13 provinces and 9 cities as areas of autonomy in Southern Philippines.		DECEMBER - President Benigno Aquino III signs Executive Order 120 creating the 15-member Transition Commission that will craft the Bangsamoro Basic Law.
1977	Triggered by the signing, a political split initiated by Ustadz Salamat Hashim and the more traditional leaders happens inside the MNLF.	2013	FEBRUARY - The parties sign the Annex on Transitional Arrangements and Modalities and agree to form an Independent Commission on Policing, which will give recommendations for appropriate structures and relationships of the police force for the envisioned Bangsamoro region.
1984	The Moro Islamic Liberation Front (MILF) is formally established under the leadership of Ustadz Salamat Hashim, a former MNLF leader.		JULY - The Bangsamoro Islamic Freedom Fighters (BIFF), a splinter guerilla group of the MILF, conducts attacks against the army a day before peace talks resume.
1987	The 1987 Constitution during the presidency of Corazon Aquino provides for the establishment of autonomous regions in the Cordilleras and Mindanao.	2014	After delay, the parties sign the Annex on Wealth-Sharing. Among others, the agreement gives automatic appropriations to the Bangsamoro, as well as a 75% share on taxes and revenues from metallic minerals.
1996	MNLF and the Government of the Philippines (GPH) sign the 1996 Final Peace Agreement.		SEPTEMBER - Up to 400 suspected members of the Moro National Liberation Front (MNLF) take over 4 barangays in Zamboanga City. The violent clashes between factions of the MNLF and government forces and occupation of barangays cause the standstill of the city for days, the displacement of more than 100,000 people and the death of several civilians.
1997	Peace negotiations start between the GPH and the MILF.	2003	DECEMBER - The panels sign the Annex on Power-Sharing, but without a deal on the so-called "Bangsamoro waters".
2000	President Joseph Estrada declares an "all-out war" against the MILF.		JANUARY - The panels arrive at agreements on the Bangsamoro waters and the Normalization Annex, which among other includes provisions for transitional justice.
2001	Peace talks with the MILF resume under former President Gloria Macapagal-Arroyo.	2008	MARCH - GPH and MILF sign the Comprehensive Agreement on the Bangsamoro (CAB) at Malacañang Palace.
2003	Hostilities between government and MILF forces breakout in Central Mindanao following large scale AFP operations in Pikit and Pagalungan municipalities against the "Pentagon" kidnap-for-ransom group. A ceasefire is re-imposed the same year.		
2004	The Malaysian-led International Monitoring Team (IMT) tasked to monitor the implementation of the ceasefire arrives in Mindanao.		
2008	The GPH-MILF Memorandum of Agreement on Ancestral Domain (MOA-AD) is declared unconstitutional by the Supreme Court. Hostilities resume in Central Mindanao.		

Source: OPAPP

Marian Pastor Roces

## FINE GRAIN AND BIG PICTURE

### Binocular vision

I was working on a book about a small town in Mindanao's Lanao del Sur, tough going for most part. The town is a permeable Christian majority town in a landlocked Muslim majority province. The book concerns the llaga depredations of the 1970s, and the run-off violence through the following decades. A great deal of blood was dredged up in the course of this work, which thus summons the complicated, hopeful aspiration that is well articulated today in the term transitional justice.

Those who follow Mindanao affairs already know that those episodes involved occasional cannibalism (the llaga working their imaginary of horror); magic potions, incantatory rites, and deranged states of being (Christians and Muslims similarly fighting with unseen companions and forces thought to wield eerie powers); a migrant sense of hard-won entitlement (the favorite rationalization for extreme violence, among the migrants so inclined); and Muslim cohesion around a spiraling sense of victimhood (the favorite rationalization for extreme violence, among Muslims so inclined). The long-drawn story, as it unfolded in this one town and in big swathes of Mindanao, involved the smallest actors, and the biggest. Both the inventors and manipulators of mammoth scenarios, on one hand, and on the other, the pawns, foot soldiers, indeed the innocent. This, too, is familiar to even cursory observers.

Still, possibly new—possibly disconcerting—to the same observers are hints of the real scale of complexity shaping these events. This scale can be detected given a minimum openness to a suggestion: that religious ideologies may not have, or may not entirely have fueled the most searing Mindanao conflagrations. It is a suggestion towards a binocular vision that recognizes the fine grain and the big picture simultaneously.

What may have slipped past analysts and many commentators—notably including journalists—is the blameworthiness of the discursive frame. Reading the most violent Mindanao problems as entirely comprehensible within the rubric of Muslim-Christian conflict is arguably short-sighted and worse, self-realizing. And while that argument exceeds the limits of this short article, I broach its basic lines, to urge that transitional justice be developed quickly as a plural rather than uni-dimensional instrument, especially in places like Mindanao, replete with many elusive facets.

In the immediate period after an apparently viable peace agreement between the Moro Islamic Liberation Front and the Government of the Republic of the Philippines, Mindanao paradoxically exhibits nearly invisible, incomprehensible spaces of dissonance that overlap with locations of overt violence; so that, even where discord is at bay, discord nevertheless seems to be perpetually latent. And, indeed, it remains a Mindanao-within-Mindanao where guilt, punishment, discipline, retribution, and accountability have erratic or manipulable meanings.

### Gist

Town X, the focus of my recent effort, is located inside a discontinuous geography of recurrent violence. I had to keep that larger historical space beyond the town in view while writing of town X as it was thus mapped, in the historical imagination, into an atlas of battle and brutalities since the 1970s. There are, as it were, archaeological sequences of events buried beneath the deeply lacerated surface of Mindanao. Which is to say that I build this essay as a provocation, not from the case-study particulars of town X, but from the much larger space that facilitates understanding of this one municipality.

The Mindanao to which town X belongs gave me to understand one idea that has been around for a while in political discussion but should perhaps gain greater currency. In brief: extraordinary brutality thrives in simplistic discourses. "Muslim-Christian conflict" is precisely the kind of oversimplified frame that obscures and often precludes the nuanced, in-depth understanding that should reveal the details shaping individual responsibility. So, too, do supposedly cultural explanations—for example, the intermittently studied spirals of violent retribution often called *rido*<sup>1</sup>—produce reduction so convincing, the reduced rendering dilutes guilt and accountability in the ultimately false clarity of a generalized social "character." Vision is blurred by the very nature of generalities (often stereotypical), focus is either compromised or disabled, and little clarity emerges about the persons guilty of manipulating culture and roiling up violent dynamics for vested interest.

<sup>1</sup> It may be useful to cite the Wikipedia entry on *rido*, for the common and too-narrow perception of *rido* as an exclusively Mindanao socio-cultural form. "Rido, or feuding between families and clans, is a type of conflict centered in the Philippine region of Mindanao, and is characterized by sporadic outbursts of retaliatory violence between families and kinship groups, as well as between communities." It adds that "rido is a Maranao term commonly used in Mindanao to refer to clan feuds. It is considered one of the major problems in Mindanao because apart from numerous casualties, rido has caused destruction of property, crippled the local economy, and displaced families." (In: <http://en.wikipedia.org/wiki/Rido>) Such information fails to promote an appreciation of equally strong operations of essentially the same socio-cultural form, in all other parts of the Philippines and of island Southeast Asia, albeit to different degrees of articulation and aggression.

Reduction of complexity overwrites the Mindanao wars of the second half of the 20<sup>th</sup> century—the low intensity sorts, the classic live rounds contests, and everything in between. The years of violence produced brutal creatures willy-nilly; victims, perpetually shocked, who retaliate with self-righteous cruelty or hide rage beneath a veneer of resignation; both earnest and monstrous politicians whose manipulations similarly produce disaster; institutions eroded by the inability to get ahead of dirty games the power-mongers play. Stating the obvious could be useful: that this admixture of lethal stuff is not Mindanao's alone. The rest of the Philippines, and many parts of the world, suffer many versions of the same mix. The burden on analysts is thus to figure out how Mindanao's version of this mix is different from the larger universes of conflicts.

What's unique about the Mindanao case, to my mind, resides in the absence of counter- or alternative discourses to that which relies on a vocabulary of stereotypes to articulate and examine the entire constellation of chaotic matters evoked by mention of blood, terror, transgression, retribution, betrayal, forced flight, carnage.

Mindanao's complexities are in large measure explained as aggression by often nameless protagonists who are thought to be possessed by some irrepressible cultural proclivity; hence by a kind of cultural predestination. The simplifications endure because those proclivities ascribed to culture (for example, the vaunted "war-like" "nature" of Muslims, or, the amulet-crazed supposed ethnicity of rampaging Ilonggos) are conflated with religious affinity. At precisely this conflated area begins the slippery slope. Too-big groups, not individuals, are marked for culpability: the military, the rebels, the vigilantes, the maddened cultists, the politicians. Even the term "State" is nebulous, lacking textured definition.

These broad strokes that conceal the fine and often the cross grain, will disorient or distort the imperatives of transitional justice. Best therefore, as political action, to embrace the complex.

### Compass points

Transitional justice—acceptance of guilt and punishment, and the ascendancy of the ideas of repentance and restitution—presupposes a precisely calibrated moral compass. Ideal, to me, is a wholly secular compass, for Mindanao affairs, that has to be deeply respectful of Christianity and Islam, deeply curious about the local variants of these religions, and profoundly cognizant of the structures of animism in Mindanao; but which has to be, nevertheless, a technology of ethical way-finding that operates *outside* any of these faith-based orders of things.

But my ideal secular ethical order is not possible in today's Mindanao, nor indeed in modern island Southeast Asia,

completely given to moral universes reproduced from Abrahamic religions grafted into myriad animisms. My secular ideal—a godless, compassionate system that is long in coming for most parts of the world—will not be a fit for the Philippine body politic anytime soon. There is, therefore, no recourse except to speak and write of the quest for justice in the languages of the existing moral order, however exotically integrated. The French philosopher Jacques Derrida (2001:28), coming to a similar pass, proposes the articulation of forgiveness for terrible crimes within the realm of the cosmopolitan; that is, to:

...do this in an Abrahamic language which is not (...) that of the dominant religion of their society, but which has already become the universal idiom of law, of politics, of the economy, or of diplomacy: at the same time the agent and symptom of this internationalisation.

Does this yield the moral order exclusively to world religions? Yes—however only strategically. Derrida himself (2001:31) was exercised by the question, which he asks precisely as tactic: "If, as I was just suggesting, such a language combines and accumulates powerful traditions within it (...), why does it today impose itself on cultures which do not have European or 'biblical' origins?"

Via which question he shifts to (he writes that he "risks") his proposition: that the forgiveness to create states of redemption, reconciliation, salvation at the national, social, political, psychological levels, should not, cannot be normal (2001:32). Forgiveness, he asserts without irony, is only possible for the unforgivable.<sup>2</sup> Forgiveness following the horrendous is never a normal matter; never conceivable at the level of the ordinarily forgivable. Hence that Abrahamic moral system can only be deployed outside the commonplace.

The norm is the (actually much more complicated) topography of the local. Binocular vision obliges the advocate of transitional justice to recognize the calculated use of a universal language of justice, on one hand; and on the other, the obligation to comprehend local moral systems, which, to say the least, is one hell of a knotted field. Over-emphasis of one over the other will create the blind spots in which the guilty—particularly the powerful who wear the mantles of such big concepts as The State—hide.

Thus, a useful twist: Derrida's guidance indeed has the effect of decentering the animisms that endure tenaciously in Mindanao and other parts of the Philippines; however, at the same time, in insisting that

<sup>2</sup> Derrida argues "that true forgiveness consists in forgiving the unforgivable: a contradiction all the more acute in this century of war crimes (from the Holocaust, to Algeria, to Kosovo) and reconciliation tribunals, such as the Truth and Reconciliation Commission in South Africa. If forgiveness forgave only the forgivable, then, Derrida claims, the very idea of forgiveness would disappear. It has to consist in the attempt to forgive the unforgivable" (2001: vii).

the excessively cruel, terrorizing, and horrific must be scrupulously relegated by all of humanity outside the normal, the philosopher produces a doubling back from abstraction to the everyday, the local, the material.

His proposition also has the effect of bringing the temporal construction of transitional justice to fore. Transitional justice is a time-oriented aspirational imperative—the adjective *transitional* makes sure that the concept involves movement—which is a strategic approach to the tasks, ideals, and responsibilities. And it is from a time-bound, strategic viewpoint that there is value in exercising the imagination at both the macro and micro, both universal and local, registers.

### Disentanglings

It is also with an appreciation of time in motion that the character of the everyday in the scheme of things, can be revealed as an extraordinarily challenging political field to disentangle. Time is a good way into this field because it concentrates some attention on change—of identities, of societies, of towns. Consider town X, therefore.

Town X belongs to a Mindanao-within-Mindanao that defies the capacity of observers to command nuance. Unraveling ethnicities alone is daunting, if ethnicity and identity are finally to be grasped, not as some ancient essences, but as clay that is malleable by historical forces. Identity and ethnicity are the first terms needing untangling. Following the current literature, identity is construction.<sup>3</sup> Ethnicity is a constellation of linguistic, cultural and historical features that different kinds of groups use as (quite raw) materials for that construction. Such inventive dynamics often enough transpires within—and because of—a politically volatile field, where complexity is ratcheted up by the operations of religion-based institutions, whether global or extremely local in reach. This conceptual effort is requisite to the historical work establishing the details of specific town X events, some of which happened decades ago.

Town X became a town in the second half of the 1950s. Migrants who started arriving in 1952 metamorphosed the hamlet into a municipality in the Lanao fringe of a massive triple-canopy rainforest, inhabited by family clusters holding faith with Islam. The town got its first mayor in 1960: the local sultan, who merely shifted from traditional leadership into modern governance. The shift was not new to him. He had previously shifted from village chief to sultan.

The old-timers are extended kin to clans living in small but older settlements at the southern shores of Lake Lanao, an area to the north of the newly established town X.

<sup>3</sup> Identity as construction, among the insights that compelled postcolonial thought, has been the object of study of concerns as varied as race relations, digital technology, gender inquiries, mass media and market operations, and so forth. Currently, violent struggles along ethnic divisions appear to benefit from inquiries into the dynamics of construction (see, for example, Fearon and Laitin 2001).

Curiously, their mythology links them more to a southerly cultural axis, towards the Maguindanao people of the flood plains at the very center of the island of Mindanao. And well-nigh intriguingly, the mother language of the town X originals is neither Maranao, the language of the communities around Lake Lanao; nor Maguindanao, the language of the Cotabato floodplains. Town X pre-migration folk are Iranun. Hence things get curiouser and curiouser when these folk call themselves and their language Maranao.

Compared to Iranun, Maranao has been the more powerful identity in 20<sup>th</sup> century Philippines (not the least owing to striking Maranao images absorbed into the national imaginary in such forms as the dance, *singkil*, elaborated by the national dance company; the retail commerce, associated with Indonesian trade goods brought in by Maranao agents; and the Maranao second-rung leadership of the first liberation front.) In the 19<sup>th</sup> century, Iranun would have struck the fear of god all around, and would have been a preferred identity in the geography between the Lanao and Cotabato provinces. This would not be the case after the late 19<sup>th</sup> century defeat of Iranun navies, by Spanish forces that finally exploited steam engine ships—when Iranun-ness receded from view. Too, there is a high enough level of kinship between the Maranao and Iranun languages to facilitate free shifting from one to the other identity; shifts to gain self-empowerment benefits—not a small matter at all in a Mindanao where alignments may spell the difference between life and death.

“The Bangsamoro is not a homogenous society. Is there a way to develop a framework for transitional justice [which] considers this diversity?”

[Participant during roundtable on transitional justice, October 2013, Davao City]

Nevertheless, the transformability of identity, and the hardening of the preferred terms of self-ascription, is belied by vociferous, often belligerent protestations in the name of a rock-like, impenetrable concept of culture and collective selfhood. In town X, it only took 60 years for a self-possessed Maranao-ness to set, from a much more relaxed or fluid cultural personality—showing strong pre-Islamic qualities—of earlier in the 20<sup>th</sup> century. This much is evident from the stories told by the town’s pre-migration residents.

Also self-evident is the most plausible reason for the turn into the identity that packs a greater wallop. Migration—which transpired from the 50s to the 70s at a scale and seemingly relentless momentum that was totally



Photo: Marian Pastor Roces

The hands of a Maguindanaon ritualist, performing a pre-Islamic danced and chanted protocol in Liguasan Marsh

unexpected by people on the ground at the outset—intensified the need to toughen out the sense of self among the original locals. The threat to identity could only be amplified by the sudden immediate proximity of settlers to locals. In due course, “Maranao” was conflated with “Muslim,” indeed its avatar “fearless Muslim,” in ways that brooked little nuance. Co-making this solidified Maranao/Muslim-ness was its other: Ilonggo/Christian-ness, Ilokano/Christian-ness, and so forth. Town X, which began its life as a hopeful social experiment initiated jointly by the national government and the sultan who became mayor—thus created itself as fundamentally divided. The 1950s’ gains in mutual understanding between town X originals and settlers, evaporated in the heat of identity politics that built up from the 1960s onwards.

### Gifts and transgressions

It is common coin in Mindanao accounts to assign the genesis of violent problems to the onset of migration from Luzon and the archipelago in the middle of the larger Philippine archipelago, the Visayas. Such accounts inevitably conclude that the post Second World War social unrest that was about to overwhelm the Luzon and Visayas plantation economy provinces, was displaced—and deferred—by exportation to Mindanao. What is missing from these accounts is the enormous fund of good faith and the most painful hopes at the start of the postwar history of migration into Mindanao.

The then newly-minted petty sultan invited settlers into his village at the edge of the great forest, at the same time that Philippine President Ramon Magsaysay eloquently committed to “land for the landless.” In the early 1950s, when the Communism-empowered peasant revolt against their overlords needed a genius political solution, Magsaysay took up the persona he was obviously most comfortable with: the prosecutor of social injustice. His re-tooled Land Settlement Development Corporation (LASEDECO) set out to oversee the mass movement of landless, surrendered rebels to Mindanao, then called “the land of promise.” It was to the LASEDECO head that the sultan offered land, indeed, for the landless. This was land under the giant trees that needed to be felled, and swidden agriculture land cultivated by the sultan’s clan—most of the hamlet—since anyone can remember.

The bigger picture offers larger room for pause from exclusively hostility-oriented discourse. It was a time of great largesse. Elsewhere in Mindanao, Muslim headmen (some, national officials) offered even larger tracts of land to LASEDECO. And while it can be said that opportunistic motives could have driven this gift-giving at least in part—descendants of the headmen recall that their fathers and grandfathers thought that modernization and government systems would arrive with the settlers—the givers were also impelled by a sense of participation in the social justice agenda of the national government. There was good faith on the part of a President who, despite a cultural belonging to a Cold War esprit, understood the injustice sustaining armed rebellion. There was, as well, good faith on the part of LASEDECO, which, from all indications, was all fired up by the hope of righting wrongs. The intensely thorough and accurate record-keeping of this government office indicates an honest leadership and bureaucracy that persisted until the end of the 1960s. These records of land distribution exist. When settlers arrived in town X through the first two decades, all the tools, animals, provisions, and precisely-surveyed land grants were entered into these records. The Muslim headmen and their families were great friends with LASEDECO officials. So were the various groups of settlers, who all arrived with great feelings of release from bondage.

Thus, when the sultan of town X became himself a refugee, together with his entire family and retainers, twice in the 1970s, after the so-called Ilaga came to kill, loot, and raze town X barangays to the ground—it stands to reason that whatever was left of all this good faith went up in the smoke. Some Ilaga of town X have allowed themselves to be recorded, saying that they killed babies, chickens, dogs, together with all adults on those occasions when entire villages had to be rid of “dangerous” people. Little residue of hope can be expected to survive these killings. Settler posses and bands of pre-migration old-timers took turns inflicting injury and dealing in death, through most

of the Cotabato provinces upwards to Lanao. Many Ilaga would be given the signal to go on murderous rampages far from their home villages. But on occasion, as in at least a few instances in town X, the Muslim residents recognized their neighbors among murderers.

### Coagulation

It is in this context of brutality that the old-timers of town X progressively took refuge in an intensified Muslim-ness, which in turn produced a heightened Christian-ness in settlers who could therefore, ironically, never really *settle down*. But the troubles had little to do with religious difference, at least until the Ilaga raised the ante to highest level, with the dismemberment and cannibalistic, symbolic eating of Muslim bodies—bodies that in Muslim theology have to be intact in the flight to the next life. This was a level of transgression beyond comprehension.

From my interviews with some Ilaga, it seems to me to be very much the case that they, too, cannot comprehend their own actions. To this day. That they were possessed by a seething sense of insecurity, living among original residents whom they quickly outpaced in agricultural productivity: this is the refrain. That they were intermittently attacked at their farms, used for target practice with live bullets, their water buckets at the town's single well kicked by bullies: this litany is still on the lips of settlers. But none of these slights and injuries explains the ferocity of Ilaga attacks.

Might cultural difference supply a channel towards understanding the level of rage? To the extent that the settlers were peasants familiar with the operations of plantations, and that the original pre-migration residents were familiar only with swidden agriculture, there were serious gaps to be bridged for cultural understanding. To the extent that Maranao speakers from the Lake Lanao region also migrated to town X, first inhabited by Iranun speakers, and to the extent that these Maranao speakers arrived in town X *later* than the Ilonggos, Ilocanos, Tagalogs, Ivatans, and so forth, there is great reason to understand the subtle inflections that differentiate Maranaos from the lakeside and Iranuns from the interiors of southern Lanao. These differences have always been clear to the town X migrants, for example, but hardly ever to journalists given to comfortable generalizations, such as the undifferentiated "Muslim." The town X migrants are, to say the least, a non-homogenous cluster of separate language communities. Again, continuing to lump them together as "Christians" closes off comprehension at deep layers.

So, of course, there are "cultural" matters that demand attention. But none of these matters refer to solidities unchanged by history. "Christian" identity in Mindanao, for instance, has been foregrounded in national discourse

during times of actual war in the second half of the 20<sup>th</sup> century; but, up to today, migrants understand themselves to be, first and foremost, members of a language community. The self-ascribed Maranao of town X readily admit that they speak and are Iranun, to anyone who can hear the difference. Both these Iranun-become-Maranao and migrants—migrants who are all overwritten by the convenient but pointless generalization "Christian"—recognize the distinct mindset of the Maranao migrants from the lakeside. Conflicts that have arisen amongst these many language groups may be described as low grade. I believe they would have sorted things out for themselves, the same way all mixed communities eventually find a way to get past jealousies and slights and even truly awful murders, if some cultural memory of good faith can survive as a common legacy.

That cultural memory of good faith did not survive because of the hardening, or coagulation, of overly simplistic discourse. Transitional justice pursued with a binocular vision can be a hopeful development in this regard: as a universal language of accountability that is refracted by details on the ground. It is necessarily a *doble vista* that can discern and parlay the good stuff that otherwise vanishes when things set into stereotypes and other opacities. Transitional justice with such a nuanced view can, paradoxically enough, fix cross hairs on individual transgressors, who will not be camouflaged by the hardened blocs of thought.

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Jurma Aming Tikmasan

## LIVED REALITIES AND TRANSITIONAL JUSTICE IN THE ISLAND PROVINCES OF WESTERN MINDANAO

When asked about supporting peace initiatives, practically everyone in Western Mindanao would express their willingness to contribute to the attainment of peace. Despite this, however, various groups and individuals are expressing pessimistic views regarding the recently signed peace deal between the Government of the Philippines and the Moro Islamic Liberation Front (MILF).

Anol Mongaya wrote that he can “sense that anti-Moro bias seeped into this pessimism.”<sup>1</sup> This is not to say, however, that peace in Mindanao could not work, he said. Obviously, there is more work to be done aside from just the signing of the documents. The people need to overcome the skepticism brought about by the so-called “failed experiment” that has been the Autonomous Region of Muslim Mindanao (ARMM).

Given the above considerations, the need to deeply understand transitional justice, and design a context-sensitive program, cannot be underestimated. As a starting point, it is essential that transitional justice pertains to both judicial and non-judicial measures.

### Peace initiatives: A gender perspective in the Western Mindanao context

Pursuing justice in Western Mindanao is truly challenging. What complicates it even more is the suspicion that much reported information is manufactured or distorted. In contrast, “effective” and “doable” local strategies that can not only inspire, but actually bring solutions to the perennial problem of violent conflict, are not given due recognition. These strategies are usually very local in their application and are not institutionalized. Furthermore, the agents of reform implementing these local strategies are often not visible, especially if they are women.

Religious leaders, women’s groups, and civil society organizations, with support from both government and other sectors like the United Nations, are already operating to help prevent armed conflict, find responses to it, and mitigate its impact on communities. Since women are affected by acts of violence to a greater extent, members of such networks are frequently women. Some efforts include:

- Organization of the Municipal and Provincial Inter-Agency Committee Against Trafficking (M/PIACAT);
- Formation of gender-based violence sub-clusters to prevent or respond to gender-based violence;
- Advocacy on women’s rights by civil society organizations like NISA, Al Mujadilah, Tarbilang, Bansag Babae, UnyPhil-Women, and others.

Furthermore, in many cases, peace negotiations are initiated by women leaders because women can more easily enter the territory of the opponents without causing trouble. The women are “unarmed” and therefore “are not threatening.” More importantly, it is socially acceptable for women to negotiate peace, while it is considered a shame for men to do the same. If a man starts a negotiation, he is perceived to be “weak and a coward.” Women representatives from feuding families silently negotiate peace, bringing updates (losses and gains of both parties) of the situation to the attention of the leaders (municipal, provincial or regional). These updates are then tabled, and formal talks are organized, but without the participation of women. Through these women’s initiatives, many lives can be saved and conflicts can be prevented from escalating. I have observed women’s contributions to peacebuilding and reconciliation as I was growing up, not recognizing it for what it was. And I am still witnessing it in the present days.

Despite these contributions, the region’s patriarchal tendency is deeply rooted, especially in grassroots communities. Stereotypical assignment of roles is seen not only as a cultural practice, but also as a religious tradition. Even many Muslim women support the idea that women cannot take over leading roles. Women’s peace talks and other women-initiated activities are usually not taken seriously and are given little importance. This neglect is also reflected in the lack of proper reporting and documentation of gender-based violence cases and human rights violations. This is unfortunate, because reparation and reconciliation which can contribute to justice and lasting peace require solid data. The same can be observed in evacuation centres, where gender concerns are not considered a top priority because the more important concerns are the provision of food and

<sup>1</sup> For the full article, please see Mongaya, Anol (2014): Peace in Mindanao. In: *Sun Star Cebu*, 30 March 2014.



Day 5 during the Zamboanga siege in September 2013

shelter, "to save lives." This is despite the fact that gender-based violence can also mean death to the victims – and trigger clan wars.

### From the siege of Jolo (1974) to the Zamboanga siege (2013)

Hoping to surface the contribution of women in the pursuit of (transitional) justice in parts of Western Mindanao, the following recollection of my experiences is outlined below.

Four decades after it happened, the Jolo siege of 1974 and the surrounding events are still vivid in my memory. As a teenager, my male relatives who joined the Moro National Liberation Front (MNLF) consistently tried to convince me to join them in the armed struggle for reform. I was just one of the many girls who were told, "just finish high school, then train to be a 'medical' (some kind of a nurse) to treat the wounded rebels." Many boys and girls totally dropped school to train in the forests of Sulu, Basilan, Tawi-Tawi, and other areas.

During the siege of Jolo it seemed like the entire population of Jolo had to run for their lives. As I account for what I witnessed during the siege of Jolo, it is as if I am again experiencing the fear of not knowing where to go, or where the next bullet was falling. Families with MNLF relatives took refuge in the camps in the nearby

mountains. Those with connections to former MNLF combatants (who returned to the folds of law, referred to as *lipunan*) evacuated to so-called secured areas assigned to them. Those with the money and access to services evacuated to Zamboanga, Basilan, Tawi-Tawi, Manila and other places. My mother and I fled to Bangas, an island fronting Jolo, with the help of a *badjao* (a member of a seafaring tribal community).

The cries of boys and girls, women and men scrambling to safety, or being hit by the bullets, was deafening. I still remember the humanity moving seawards in an attempt to catch the boats that would bring us to safety. I cannot ever forget the image of a mother with her infant and a pot of boiled rice: she succeeded in boarding the *badjao's* pump boat with us, but her other children were left swimming in the sea trying to get hold of the boat, while she begged the *badjao* to wait...

I remember getting wet from the splash of seawater being hit by the bullets from a helicopter above us. I remember watching the burning of Jolo from my perch on the *badjao's banca* in Bangas - and almost being able to feel the heat of the Jolo fire from across the sea. After experiencing the destruction, suffering, and deaths, I could not stop to asking myself: Why?

Through all the chaos and confusion at that time, most of those who stood firm to take care of family members were women. Many families in the evacuation centres and other areas where people gathered for relative security were headed by women. The men were either busy with their guns as MNLF members or somewhere in the smoking debris of Jolo – trying to find something edible from the ruins. While the women had to brave the disturbed emotions of the military men assigned in the area to negotiate for the safe passage or release from detention and torture of male relatives, it was common knowledge back then that they stood better chances of surviving. There were reports, however, that women and girls were violated by the military. On the other hand, men and boys were all treated with suspicion in those days – they could not be moving about without having to face interrogations, detention, or even death.

“ I found out that Zamboanga tragedy opens several wounds. It opened the wound of the Tausugs and the Maguindanaoans. Tausugs felt that the Maguindanaoans, the MILF, left the MNLF behind. This would be a bigger tragedy, a bigger injustice when our fellow Muslims will be the one committing injustices towards us. If transitional justice could stop the cycle of violence, then it's good.”

(Participant during a roundtable on transitional justice, October 2013, Davao City)

When looking at the recent Zamboanga siege, it seems that history keeps on repeating itself. While laws for the protection of human rights and agencies to implement them exist, many human rights violations in the context of the “Moro Conflict” remain unaddressed. Some leaders looked up to by the community remain unmindful of the lessons of the past: there are no winners in armed conflict and the public has always been the ultimate victim.

While the mainstream society claims to strengthen understanding of the cultural differences of Filipino tribes, most still use their own set of standards when dealing with others. The lack of sincerity from all sides could well have been a cause of the Zamboanga siege. And so it happened again - the bullets, the fire, the disrespect for human rights and life, the urge to fight back on one side and the desire to put the other in their place, on the other.

### The Islamic context on conflict resolution and justice

Muslim Filipinos, regardless of tribe and sex, are united in their belief in the law stipulated in the Holy Qur'an which includes conflict resolution and mediation. Where there is no law that exist in the Qur'an, Muslims refer to Prophet Muhammad's practice and tradition (*Sunnah* and *Hadith*). Sometimes, they also use their own reasoning (*Ijtihad*) and make decisions by consensus for the best interest of the community (*Istislah*).

The role of women as peace negotiators is closely related with arguments in support of gender justice in Islam. The Qur'an and basic principles of Islam support gender justice, but patriarchal societies diminished this. Understanding women's rights in the context of Islam and popularizing the Islamic teaching that the only difference between women and men is in the degree of their devotion would support equality, protect women rights and promote gender justice.

As outlined in the Qur'an, justice refers to balance and is the foundation upon which creation stands. Prophet Muhammad is reported to have said: “Mankind are the family of God, and the most beloved of them to God are those who are the most excellent to His family;” and, “Not one of you believes until he loves for his brother what he loves for himself.”

As a central concept, justice includes retaliation, but benevolence and forgiveness are the higher ideals. It also includes concern for, and protection of, the weaker members of society. These ideals – when popularly understood and strengthened by Muslim leaders who strive to follow them – can prevent injustice and facilitate reconciliation. In Islam, peace and making peace are seen as Godly acts worthy of praise and reward.

### Implications and recommendations for transitional justice

Truly understanding and respecting cultural differences can be the starting point for attaining lasting peace. This means avoidance of conflict escalations through miscommunication based on individual biases, such as what happened in the Zamboanga siege. In light of the current peace process, it is hoped that all concerned would learn from past experiences and sincerely support the peace process with a transitional justice program able to heal the wounds of the violent past. A transitional justice program should pay attention to the important role of women in peacebuilding and, in order to contribute to reconciliation, support women leaders as they step out of the invisible shadows.

A transitional justice program should start by protecting human rights through complying with signed agreements and international humanitarian law. It would also need to:

- Create bases for reporting cases accurately and responding to it appropriately as spelled out in various laws and international humanitarian law, such as the Magna Carta of Women, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UNSCR 1325 National Action Plan, Commission on Human Rights, and others;
- Strengthen entry points and access at the community level in order to improve data capture and processing of cases of gender-based violence and human rights abuses for appropriate responses;
- Review performances of military personnel in consideration of alleged abuses against civilians.

Furthermore, a transitional justice program needs to be grounded in victims' demands for appropriate actions based on existing laws and practices acceptable to them. These actions and practices are all discussed during the negotiation of a case. Depending on the gravity of the situation, compensation or *kasaan* may be paid. Otherwise the perpetrator should be prosecuted. While negotiating cases, victims would be telling their stories. Outside of negotiations, they might prefer to "just not talk about it."

To facilitate solid support from the Muslim population, transitional justice workers should include an Islamic perspective on justice and equality and take up the core values of respect, benevolence, and forgiveness. Learning from our work on promoting gender equality in Islam, I would suggest engaging Muslim religious leaders in popularizing these core values among Bangsamoro people, especially among its leaders. Advocating peace in line with the Sharia system can be positively modified through their guidance, and elements of transitional justice can be discussed with an Islamic perspective.

# Conclusion

“This is a country, post-dictatorship, where you can meet your torturer across the street... I don't want a repeat of that for Mindanao.”

(Participant during a roundtable on reconciliation, May 2014, Davao City)

So after all that has been written and analyzed, what is the Philippine and Mindanaoan way of transitional justice? While this volume cannot claim to answer the question, a careful reading of the different articles reveals some critical themes and questions, which may provide compass points and signposts along the way.

## Recurring themes

All articles in this volume have clearly shown that transitional justice opens up some of the most sensitive issues – culturally, politically, and historically. Walking the thin line of dealing with these issues without deepening wounds of the past or breaking promises has been challenging in other post-conflict contexts, as it will be in Mindanao. While the authors highlight different aspects and dynamics, three themes recur throughout the volume. Only a transitional justice program of a *well-defined scope* and of *participatory nature*, which is *locally contextualized*, can pave the road to reconciliation and make good on the Framework Agreement's threefold promise of addressing the legitimate grievances of the Bangsamoro people, correcting historical injustices, and addressing human rights violations.

### *Well-defined scope*

The first challenge will be to define the features of a transitional justice program in more detail and fill in specifics on the rather broad provisions in the Framework Agreement on the Bangsamoro. This involves defining territorial, historical, and geographical parameters and jurisdictions, raising questions around how far into the past a transitional justice program should look back.

As several authors point out, the current reality in Mindanao is influenced by previous attempts at transitional justice, though it was not necessarily termed as such. Ironically, Roces notes how many who came to Lanao in the 1960s were resettled in an effort to give “land to the landless” and address the grievances of communist insurgents in other parts of the country. Carranza details the ongoing national level efforts of transitional justice

for the Marcos dictatorship, while Castillo notes the very recent reactions to the monetary reparations for these Marcos-era victims.

In terms of concrete timeframes for transitional justice in the Bangsamoro context, Castillo identifies the “rupture” of the late 1960s and early 1970s as a turning point in the historical narratives of communities in Central Mindanao. This mirrors the frame of Tikmasan's searing recollection of the siege of Jolo and Roces' depiction of the atrocities that unravelled communities' relationships in Lanao in the 1960s. These timeframes expose the inadequacy of standard legal mechanisms constrained by statutory limitations and technical evidence requirements as sole instruments of transitional justice. As Figari Layús details, the lessons learned from legal efforts overly dependent on prosecutions in Latin America have produced transitional justice that is often defunded, delayed, or denied.

This inadequacy also bears on the scope of rights violations that should concern a transitional justice program. Looking at previous experiences in various contexts, Brankovic and van der Merwe argue for an expanded definition of human rights, to include not only civil and political rights, but also of economic, social, and cultural rights violations. This opens up a much broader set of violations, and consequently, victims. It would also require holistic, comprehensive, and creative mechanisms to provide reparations for such violations. In the same context, Carranza notes that Mindanao's communities share long, multiple experiences of co-existence and conflict over land and resources. Including such issues of land and natural resources in transitional justice will be a tricky, but necessary, element in addressing root causes of conflicts in the Bangsamoro.

Finally, scope also concerns the moral and philosophical foundations that inform the value base of a transitional justice process. If a cosmopolitan ideal is not feasible in the context of Mindanao, as argued by Roces, transitional justice needs to take up the challenge of mediating between different cultural and religious frames for “forgiving the unforgivable” and rekindling dormant memories of cultural good faith between communities.

### Participatory nature

A consistent finding throughout the volume is that victims must have a seat at the table throughout the process, meaning as early as when the parameters of the process are defined. Figari Layús as well as Wandita underline that only a participatory process involving affected communities allows for maintaining a restorative focus on their needs and visions for the future.

Wandita further points out the need for ongoing organizational and financial capacity building for grassroots organizations in order to sustain their efforts across the activity spectrum, from lobby and advocacy to reconciliation work. At the same time, there have to be efforts to make the process responsive to marginalized groups – such as the youth, women, and indigenous peoples – and to consider the next generation as stakeholders.

“In this process of healing, we are not only talking about [what] our forefathers have experienced, but we are also talking about the confusion of the youth. In the discourse [on] transitional justice, I would love to see the youth playing an active role.”

[Participant during a roundtable on transitional justice, October 2013, Davao City]

While acknowledging the grave human rights violations, historical injustices and legitimate grievances of the Bangsamoro people, there are also critical experiences of violence, aggression, and injustice between and among all the main demographic groups in the Bangsamoro. All these groups need to be given real and meaningful roles from the beginning of the process in order to build sustainable reconciliation.

Consequently, Castillo argues that different understandings of Moro, indigenous peoples, and settler communities on truth, justice, and reparations need to be taken into account for a meaningful approach on transitional justice in the Bangsamoro. This means maximizing both formal and informal consultation processes, and including local communities in their formulation, guidance, and implementation.

### Locally contextualized

A contextualized approach to transitional justice, as Brankovic and van der Merwe as well as Figari Layús point out, not only involves intertwining mainstream transitional justice mechanisms with local mechanisms, it also means awareness of local realities as crosscutting imperative. The latter should inform a transitional justice program through the close consideration of political, legal, economic, and social factors and the enabling or limiting conditions they create.

Carranza shares insights into how this process can build on and learn from the successes and failures of the post-Marcos years, which in many ways mirror lessons that Wandita shares from Aceh. These experiences highlight the importance of astute political and situational analysis at the national level to strengthen local efforts in order to account for the hidden power-players, an aspect also espoused by Rocés' call for a micro-macro “binocular vision” of transitional justice advocates. This is also where international actors in partnership with local civil society can strengthen mechanisms to counter-leverage political and economic elites seeking to manipulate the process for their own purposes.

The closing essays by Tikmasan and Rocés bring to the fore the diversity and complexity of different layers of identity that will co-exist in the Bangsamoro – not just between Moros, indigenous peoples, and settlers, but also within these groups. A transitional justice program needs to embrace such complexity rather than give rise to the formation of monolithic identities and the domination of one particular truth at the expense of others.

### Moving beyond

Careful consideration of these critical themes opens the way towards a larger set of questions: How are transitional justice and its components defined and understood in the minds of the actors and stakeholders? Who defines what is a legitimate grievance, as stipulated in the FAB? Furthermore, assigning these “grievances” to the “Bangsamoro people” raises issues of identity and inclusivity: Does it include those who live within the core territory but don't identify themselves as Bangsamoro? What about those Bangsamoro living outside the core territory, be it voluntary or by displacement, or those in border areas affected by the violence that spilled outside of the Bangsamoro territory as currently delineated?

Giving due attention to these questions and the complex, multi-layered past of this region, a transitional justice program in the Bangsamoro context would need to go beyond standardized approaches. One important aspect here might be to consider if using categories like “victim” and “perpetrator” of the standard repertoire of transitional justice does more harm than good, given the multi-faceted and layered history of violence in Mindanao. Informed by diverse local understandings and concepts of truth, justice, and reparations, such a program would need to build upon the plurality of experiences in the Bangsamoro context.

This also implies that transitional justice needs to do more than dealing with human rights violations and historical injustices that occurred along the vertical conflict lines between the Government of the Philippines and the Moro liberation fronts. It would need to tackle histories of violence and the unravelling of social relations at the horizontal community level of the conflict. The simplified narratives that have been built around the Bangsamoro revolutionary movement will need to evolve to engender an inclusive and justice-seeking autonomy and political discourse.

In the end, a shift in this discourse would also need to surface the less overt, but similarly harmful issues of discrimination and bias against the Muslim minority living in a majority Christian nation, expressed through Muslim “invisibility” in popular culture and educational curricula, as well as the broader stereotyping of Mindanaoans in national media that sensationalizes the violent conflict in the South.

Through such a lens, addressing the *legitimate grievances* of the Bangsamoro people (and all people affected by the violence) could give way to a broader transformative societal process not limited to the Bangsamoro core territory. Such a process would involve honest truth-telling, and deeper soul-searching, by all Filipinos.

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## LIST OF **ABBREVIATIONS**

<b>AJAR</b>	Asia Justice and Rights
<b>ARMM</b>	Autonomous Region in Muslim Mindanao
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>BBL</b>	Bangsamoro Basic Law
<b>BIFF</b>	Bangsamoro Islamic Freedom Fighters
<b>BRA</b>	Badan Reintegrasi Aceh (Banda Aceh Rehabilitation Agency)
<b>CAB</b>	Comprehensive Agreement on the Bangsamoro
<b>CAFGU</b>	Citizen Armed Force Geographical Unit
<b>FAB</b>	Framework Agreement on the Bangsamoro
<b>forumZFD</b>	Forum Ziviler Friedensdienst e.V. (Forum Civil Peace Service)
<b>GAM</b>	Gerakan Aceh Merdeka (Free Aceh Movement)
<b>GPH</b>	Government of the Philippines
<b>IMT</b>	International Monitoring Team
<b>ICTJ</b>	International Center for Transitional Justice
<b>IP</b>	Indigenous Peoples
<b>Komnas HAM</b>	Komisi Nasional Hak Asasi Manusia (National Human Rights Commission of Indonesia)
<b>LASEDECO</b>	Land Settlement Development Corporation
<b>MILF</b>	Moro Islamic Liberation Front
<b>MNLF</b>	Moro National Liberation Front
<b>MoA-AD</b>	Memorandum of Agreement on Ancestral Domain
<b>MoU</b>	Memorandum of Understanding
<b>NGO</b>	Non-Governmental Organization
<b>OPAPP</b>	Office of the Presidential Adviser on the Peace Process
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>PCGG</b>	Presidential Commission on Good Government
<b>PCHR</b>	Presidential Commission on Human Rights
<b>RAM</b>	Reform the Armed Forces Movement
<b>TJRC</b>	Transitional Justice and Reconciliation Commission

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### Websites:

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International Journal for Transitional Justice:  
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